

United States
Circuit Court of Appeals
For the Ninth Circuit.

ALBERT C. MORRISON and V. E. LARDI,
Plaintiffs in Error,

VS.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
First Division.

FILED

MAY 29 1922

F. D. MONCKTON,
CLERK,

United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

For Plaintiff and Defendant in Error:

ROBERT H. McCORMACK, Esq., Spec. Asst.
U. S. Atty. Gen.; JOHN T. WILLIAMS,
United States Attorney, San Francisco,
Calif.

For Defendants and Plaintiffs in Error:

BERT SCHLESINGER, Esq., and C. W. DUBROW, Esq., San Francisco, Calif.

In the Southern Division of the District Court of
the United States in and for the Northern District
of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,

Plaintiff and Defendant in Error,

vs.

ALBERT C. MORRISON and V. E. LARDI,

Defendants and Plaintiffs in Error.

**Praeipie for Transcript of Record on Writ of
Error.**

To the Clerk of said Court:

Sir: Please prepare certified transcript on writ
of error of the following pleadings, papers and
orders:

1st. Indictment.

2d. Verdict of jury.

3d. Motion in arrest of judgment.

4th. Motion for new trial.

- 5th. Sentence and judgment.
- 6th. All stipulations and orders on file extending time to prepare and have settled bill of exceptions.
- 7th. Bill of exceptions as settled by trial Judge.
- 8th. Petition for writ of error.
- 9th. Order allowing writ of error.
- 10th. Assignment of errors.
- 11th. Bond of costs.
- 12th. Writ of error. [1*]
- 13th. Citation on writ of error.
- 14th. Praeceptum for certified transcript.
- 15th. Orders enlarging return day writ of error.

Dated: March 1, 1922.

BERT SCHLESINGER,
C. W. DURBROW,

Attorneys for Defendants and Plaintiffs in Error.

[Endorsed]: Filed Mar. 1, 1922. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICHARD BUCKING, and JOHN ANTONETTI,
Defendants.

*Page-number appearing at foot of page of original certified Transcript of Record.

Information.

At the July term of said Court in the year of our Lord one thousand nine hundred and twenty-one.

BE IT REMEMBERED, that Frank M. Silva, United States Attorney for the Northern District of California, by and through Ben F. Geis, Assistant United States Attorney, who for the United States in its behalf prosecutes in his own proper person, comes into court on this, the 3d day of August, 1921, and with leave of the said Court first having been had and obtained, gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath, and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof;

NOW, THEREFORE, your informant presents:
THAT

ALBERT C. MORRISON, V. E. LARDI, RICHARD BUCKING and JOHN ANTONETTI
hereinafter called the defendants, heretofore, to wit, on or about the [3] 30th day of July, 1921, at and in "Techau Tavern," 247 Powell Street in the City and County of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, then and there being, did then and there wilfully

and unlawfully maintain a common nuisance in that the said defendant did then and there wilfully and unlawfully keep on the premises situated at and in "Techau Tavern" 247 Powell Street, City and County of San Francisco, aforesaid, certain intoxicating liquor, to wit: gin, whiskey, port wine, and red wine, all of said intoxicating liquors, then and there containing one-half of one per cent or more of alcohol by volume, which was then and there fit for use for beverage purposes.

That the keeping of the said intoxicating liquor by the said defendant at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act."

AGAINST the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided. [4]

SECOND COUNT.

And informant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof,

NOW, THEREFORE, your informant presents:
THAT

ALBERT C. MORRISON, V. E. LARDI, RICHARD BUCKING and JOHN ANTONETTI

hereinafter called the defendants, heretofore, to wit, on or about the 30th day of July, 1921, at and in "Techau Tavern," 247 Powell Street, in the City and County of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, then and there being, did then and there wilfully and unlawfully possess certain intoxicating liquor, to wit, gin, 1 pint bottle of port wine, one quart bottle of red wine, about two quarts of whiskey, one quart bottle containing whiskey and one quart bottle containing alcoholic liquor, the name of which is to informant unknown, all of said intoxicating liquors, then and there containing one-half of one per cent or more of alcohol by volume, which was then and there fit for use for beverage purposes.

That the possession of the said intoxicating liquor by the said defendant at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28th, 1919, to wit, the "National Prohibition Act."

AGAINST the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided. [5]

THIRD COUNT.

And informant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each

of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof.

NOW, THEREFORE, your informant presents:
THAT

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI

hereinafter called the defendants, heretofore, to wit, on or about the 29th day of July, 1921, at and in "Techau Tavern," 247 Powell Street, in the City and County of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, then and there being, did then and there wilfully and unlawfully sell certain intoxicating liquor, to wit: two gin cocktails, two loganberry highballs and four Scotch whiskey highballs, all of said intoxicating liquors, then and there containing one-half of one per cent or more of alcohol by volume, which was then and there fit for use for beverage purposes.

That the sale of the said intoxicating liquor by the said defendant at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28th, 1919, to wit, the "National Prohibition Act."

AGAINST the peace and dignity of the United States of America and contrary to the form of the

statute of the said United States of America in such case made and provided. [6]

FOURTH COUNT.

And informant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof,

NOW, THEREFORE, your informant presents:
THAT

ALBERT C. MORRISON, V. E. LARDI, RICHARD BUCKING, and JOHN ANTONETTI, hereinafter called the defendants, heretofore, to wit, on or about the 30th day of July, 1921, at and in "Techau Tavern," 247 Powell Street, in the City and County of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, then and there being, did then and there wilfully and unlawfully sell certain intoxicating liquor, to wit: two gin cocktails and two Scotch whiskey highballs all of said intoxicating liquors, then and there containing one-half of one per cent or more of alcohol by volume, which was then and there fit for use for beverage purposes.

That the sale of the said intoxicating liquor by the said defendant at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of

Congress of October 28th, 1919, to wit, the "National Prohibition Act."

AGAINST the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided. [7]

FRANK A. SILVA,

United States Attorney.

BEN F. GEIS,

Asst. U. S. Attorney. [8]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

D. W. Rinckel being first duly sworn, deposes and says:

That Albert C. Morrison, V. E. Lardi, Richard Bucking and John Antonetti, on or about the 30th day of July, 1921, at and in "Techau Tavern," 247 Powell Street, in the City and County of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, did then and there maintain a common nuisance in that the said Albert C. Morrison, V. E. Lardi, Richard Bucking and John Antonetti did then and there keep on the premises 247 Powell St., San Francisco aforesaid, certain intoxicating liquor, to wit: gin, whiskey, port wine and red wine, all of said intoxicating liquors then and there containing one-half of one per cent or more of alcohol by volume and fit for use for beverage purposes.

That the keeping of the said intoxicating liquor by the said Albert C. Morrison, V. E. Lardi, Richard Bucking and John Antonetti at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

And affiant on his oath aforesaid further deposes and says: That Albert C. Morrison, V. E. Lardi, Richard Bucking and John Antonetti, on or about the 30th day of July, 1921, at and in "Techau Tavern," 247 Powell St., in the City and County of San Francisco, in the Southern Division of the Northern District [9] of California, and within the jurisdiction of this Court, did then and there possess certain intoxicating liquor, to wit: gin, 1 pint bottle of port wine, one quart bottle of red wine, about 2 quarts of whiskey, 1 quart bottle containing whiskey, and 1 quart bottle containing alcoholic liquor, name of which is to affiant unknown, then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the possession of the said intoxicating liquor by the said parties above named, was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of October 28, 1919, to wit, the National Prohibition Act.

And affiant on his oath aforesaid further deposes and says: That Albert C. Morrison, V. E. Lardi, Richard Bucking, and John Antonetti, on or about the 29th day of July, 1921, at and in "Techau

Tavern," 247 Powell Street, San Francisco, California, and within the jurisdiction of this Court, did then and there sell certain intoxicating liquor, to wit, two gin cocktails, two loganberry highballs and four Scotch whiskey highballs, all of said intoxicating liquors then and there containing one-half of one per cent or more of alcohol by volume, which was then and there fit for use for beverage purposes.

That the sale of the said intoxicating liquor by the said parties above named was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of October 28th, 1919, to wit, the National Prohibition Act.

And affiant on his oath aforesaid, further deposes and says: That Albert C. Morrison, V. E. Lardi, Richard Bucking and John Antonetti, on or about the 30th day of July, 1921, at and in "Techau Tavern," 247 Powell Street, San Francisco, California, and within the jurisdiction of this Court, did then and there sell certain intoxicating liquor, to wit, two gin cocktails and [10] two Scotch whiskey highballs, all of said intoxicating liquors then and there containing one-half of one per cent or more of alcohol by volume, and fit for use for beverage purposes.

That the sale of the said intoxicating liquor by the said parties above-named, was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of October 28th, 1919, to wit, the National Prohibition Act.

D. W. RINCKEL.

Subscribed and sworn to before me this 3d day of August, 1921.

[Seal] J. A. SCHAERTZER,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Aug. 4th, 1921. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [11]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof in the City and County of San Francisco, on Friday, the 28th day of October, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 9720.

UNITED STATES OF AMERICA

vs.

ALBERT C. MORRISON et al.

Minutes of Court—October 28, 1921—Trial.

This cause came on regularly this day for trial of defendants Albert C. Morrison and V. E. Lardi upon the information filed herein. Said defendants were present in court with their Attorneys, Bert Schlesinger and T. L. Lennon, Esqs. B. F. Geis, Esq., Asst. U. S. Dist. Atty., and R. H. McCormack, Esq., Special Assistant United States Attorney

General, were present on behalf of the United States. Upon the calling of the case, all parties answering ready for such trial, the Court ordered that same do proceed and that the jury-box be filled from panel of trial jurors of this court. Accordingly the hereinafter named persons were duly called, sworn, examined, accepted and sworn as the jurors to try said defendants, viz:

| | |
|---------------------|------------------|
| Patrick Hackett | Leonard Brock |
| J. T. McCormick | D. C. Malcolm |
| Geo. E. Hosmer | Robert S. Atkins |
| Robt. A. Lewin | Walter L. Glenn |
| Christopher Wilfert | Phil Kennedy |
| Chas. V. Patterson | N. A. Judd. |

Thereupon Mr. Schlesinger presented and filed "Notice of Objection" and moved the Court for order excluding certain evidence herein and filed a Search-warrant, etc., as an exhibit, and after hearing Mr. Schlesinger, the Court ordered said motion denied, and an exception to said order was entered. [12]

On motion of Mr. Schlesinger, the Court ordered that all persons to be called as witnesses herein be excluded from the courtroom during the introduction of evidence, except when on the stand.

Mr. Geis made statement to the Court and Jury as to the nature of the case and called A. S. Rinkel, D. D. Simpson, G. H. Crawford, R. A. Wolf, V. H. DeSpain, H. M. Kupser, D. W. Rinkel and R. F. Love, each of whom was duly sworn as a witness on behalf of the United States, and each was examined with the exception of D. D. Simpson, and

introduced in evidence on behalf of the United States certain exhibits which were filed and marked U. S. Exhibits Nos. 1 to 5, inclusive, (bottles and contents).

Mr. Schlesinger then made statement on behalf of defendants.

Thereupon the hour of adjournment having arrived, the Court, after having admonished the Jury herein, ordered that the further trial of this case be and the same is hereby continued to Oct. 31, 1921, at 10 A. M., and that all parties be and appear accordingly. [13]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof in the City and County of San Francisco, on Monday, the 31st day of October, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 9720.

UNITED STATES OF AMERICA

vs.

ALBERT C. MORRISON et al.

Minutes of Court—October 31, 1921—Trial (Continued).

This case came on regularly this day for the further trial of defendants Albert C. Morrison and

V. E. Lardi, who were present in court with their Attorneys, Bert Schlesinger and T. L. Lennon, Esqs. B. F. Geis, Esq., Asst. U. S. Dist. Atty., and R. M. McCormack, Esq., Special Assistant United States Attorney General, were present for and on behalf of the United States. The Jury heretofore impaneled was present and complete.

Mr. Geis recalled D. D. Simpson, who was examined, and then called C. H. Wheeler and J. P. Doyle, each of whom was duly sworn and examined as a witness for the United States, and recalled A. S. Rinkel, who was further examined, and thereupon rested case of United States.

Mr. Schlesinger called C. H. Wall, Albert C. Morrison (defendant), V. E. Lardi (defendant), A. B. Stratgis and John Parish, and introduced in evidence a diagram which was filed and marked Defendants' Exhibit "A," and rested case on behalf of defendants.

Certain exhibits were introduced in evidence on behalf of the United States, which were filed and marked U. S. Exhibits 6 (card) and 7 (menu card).

Mr. Geis recalled in rebuttal, on behalf of the United States, D. D. Simpson and A. S. Rinkel and rested. [14]

The case was then argued by Mr. McCormack, Mr. Lennon, Mr. Schlesinger and Mr. Geis and submitted, whereupon the Court proceeded to instruct the Jury herein, who, after being so instructed, retired at 5 o'clock and 5 minutes P. M., to deliberate upon a verdict and subsequently returned into court at 9 o'clock and 40 minutes P. M. and, upon

being called, all twelve (12) jurors answered to their names and were found to be present, and, in answer to question of the Court, stated they had agreed upon a verdict and presented a written Verdict, which the Court ordered filed and recorded, viz:

“We, the Jury, find as to the defendants at the bar as follows: Albert C. Morrison, Guilty on 1st and 2d Counts, V. E. Lardi, Guilty on 3d and 4th Counts.

ROBERT S. ATKINS,
Foreman.”

Thereupon the Court ordered that the jurors be and they are hereby discharged from further consideration of this case and from attendance upon the court until November 3, 1921, at 10 o'clock A. M. After hearing Attorneys, the Court ordered this case continued to November 4, 1921, for pronouncing of judgment and that defendants go at large upon bonds heretofore given for their appearance herein.

During deliberation of jury, the Court ordered that the U. S. Marshal furnish jury and two bailiffs with dinner at the expense of the United States.
[15]

In the Southern Division of the District Court of
the United States, in and for the Northern
District of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

**Bill of Exceptions of Defendants Albert C. Mor-
rison and V. E. Lardi.**

The above-entitled cause came on for trial on
Friday, October 28, 1921, at the hour of 10 o'clock
A. M., in San Francisco, State of California, and
a jury having been duly impanelled and sworn
to try the case, thereafter the following proceed-
ings were had, testimony taken, and evidence, oral
and documentary, was introduced on behalf of the
United States and on behalf of the defendants
Albert C. Morrison and V. E. Lardi, as follows:

**OPENING STATEMENT FOR THE GOVERN-
MENT.**

Mr. GEIS.—Gentlemen, I have already stated
to you what this case is about when you were called
and examined; there is very little to add to my
preliminary opening statement, except that the
information is in three counts, the first one being
that the defendants did wilfully and unlawfully

maintain a common nuisance, in that the said defendant did then and there wilfully and unlawfully keep on the premises at what is known as Techau Tavern, 247 Powell Street, City and County of San Francisco, aforesaid, certain intoxicating liquor, to wit, gin, whiskey, port wine, and red wine all [16] of said intoxicating liquors then and there containing one-half of one per cent or more alcohol by volume.

The question of common nuisance will, of course, be covered by the Court in its instructions. I call your attention to that for the moment because of the fact that Mr. Schlesinger asked you if you knew that fact, speaking about its being a common nuisance. What constitutes a common nuisance will be given to you by the Court.

Mr. SCHLESINGER.—So that there will be no misunderstanding about it, Mr. Geis, you certainly do charge that the defendants are maintaining a common nuisance?

Mr. GEIS.—Yes, that is charged.

Mr. SCHLESINGER.—Yes; that is what I stated, and that is the fact—you do charge it.

The COURT.—The Prohibition Statute defines what a common nuisance is in that sense.

Mr. SCHLESINGER.—Yes, your Honor.

Mr. GEIS.—We have four defendants here. Two of the defendants have pleaded guilty—

Mr. SCHLESINGER.—I do not think that is proper, Mr. Geis. The guilt of two men has nothing to do with the guilt or innocence of the main defendant on trial.

Mr. GEIS.—No, certainly not, but I think it is proper for me to make that reference.

Mr. SCHLESINGER.—I don't want the jury misled.

Mr. GEIS.—I haven't any intention of misstating anything to the jury, I just want them to know the facts.

On the 30th of July, 1921, it is charged that they did unlawfully possess one pint bottle of port wine, one quart bottle of red wine, about two quarts of whiskey, one quart bottle containing [17] whiskey, and one quart bottle containing alcoholic liquor, the name of which is to informant unknown, all of said intoxicating liquors then and there containing one-half of one per cent or more of alcohol by volume.

The third count charges a sale on the 29th of July, 1921, a sale of two gin cocktails, two loganberry highballs, and four Scotch whiskey highballs. And then they are charged with another sale of two gin cocktails and two whiskey highballs, all of said intoxicating liquor containing the prohibitive amount mentioned in the National Prohibition Act.

We expect to prove to this jury that these sales were made, and the liquor was found in the Techau Tavern, and we expect to show you that Mr. Morrison was there, and that Mr. Lardi was there, and had at least reasonable knowledge of the sales and the possession.

With that testimony before you, the Government will ask you for a verdict of guilty.

Mr. GEIS.—To make it a little more complete, the Government expects to prove each and every, all and singular, the allegations set out in the information, just as they are alleged. (Tr. pp. 1-4.)

Testimony of A. S. Rinckel, for the Government.

A. S. RINCKEL, a witness called on behalf of the United States, being duly sworn, testified as follows:

My name is A. S. Rinckel. I am a brother of D. W. Rinckel, the prohibition agent. I know the location of the Techau Tavern, 247 Powell Street, in this City and County. I was at the Techau Tavern on the 29th day of July, this year, about eleven o'clock in the evening. I am also a Federal prohibition agent. Miss Simpson and myself visited Techau Tavern, being authorized by John Exnicios who at that time was Prohibition [18] Enforcement Agent, and entered the place about eleven o'clock in the evening; we proceeded to a two-chair table on the side of the dining-room; we then ordered two drinks, loganberry highballs, which were soft drinks, and—

Mr. SCHLESINGER.—If your Honor please, I don't wish to interrupt the witness with objections, but may it be understood that my objections heretofore made go to the testimony of this witness?

The COURT.—Yes.

Mr. SCHLESINGER.—And we reserve our exception.

WITNESS.—(Continuing.) Mr. Morrison was passing the table about that time, and I got up and

(Testimony of A. S. Rinckel.)

shook hands with him and made myself known as Mr. Belmont, stating that I had knew him down at the old place, and that this was the first time I had been in the new place; and I also asked him where Rudolph was. He said that Rudolph was out at the beach at the time and was not working there. A few minutes afterwards Mr. Lardi passing the table, he is the other defendant, I asked him if we could have something with a "kick" in it, and he said he didn't know, that he would have to see Mr. Morrison first. I told Mr. Lardi that I knew Mr. Morrison. He said, "Well, I will see." He then came back in about two or three minutes and asked us what we would have.

Q. By the way, did he go and see Mr. Morrison?

A. Yes, he did.

WITNESS.—(Continuing.) And he asked us what we would have. We said, "Anything with a kick in it." He then brought two gin cocktails. We then asked him if we could have a whiskey highball. He said we could, and we were served with two. In a short time we ordered two more whiskey highballs from the defendant Lardi, which were served. We then asked for our check, which amounted to [19] \$9.27, and Mr. Lardi said there were quite a number of amusements there on Saturday night, and it would be very advisable for us to drop down at about seven or eight o'clock for dinner, which we said we would, and he said he would reserve a table on his station. Then we left and we returned on July 30th. We entered

(Testimony of A. S. Rinckel.)

Techau Tavern about 7:30 on July 30th in the evening, and were seated at a four-chair table on the southeast side of the dining-room, facing the dance floor. Mr. Lardi came up to our table and asked us if we would have something with a smile in it. We said we would. We were served with two gin cocktails. We then ordered our dinner. After serving the salad, we asked Mr. Lardi if we could have a whiskey highball. He said we could, and he would make the whiskey highball double strength, as they were running out of liquor and would not have enough to go around for the guests. He brought them to us. The liquor was served, the whiskey highballs were served. The double-strength whiskey highballs were served in 6-ounce glasses. After serving our dinner, we asked Mr. Lardi if we could have an after-dinner drink. He said we could, and he asked us what we would have, as they would serve anisette, apricot brandy, or any other cordial—after-dinner drink. Miss Simpson then asked him for a coffee royal. A coffee royal is a black coffee with whiskey or cognac. I know gin, whiskey, cognac, brandy and various kinds of alcoholic liquors when I drink them; I know when liquors are strong or weak and I would say from my experience and knowledge of liquor, having drunk it, that the liquor that was served me there that night contained more than one-half of one per cent of alcohol by volume. The coffee royal was never served, but he said he would give

(Testimony of A. S. Rinckel.)

it to us. It was then about 9:20. The arrangements were to have the two drinks on our table at 9:30, when the raid was arranged for. At 9:30 the raid took place by Federal prohibition agents. Agent Crawford took the two drinks of liquor off our table. They were two whiskey highballs of double strength. They had not been consumed [20] by me or by Miss Simpson. They were still in the glass. We then asked for our check. While waiting for our check, a blonde captain came up to our table and told us that if any more prohibition agents came up to our table, to tell them that we brought the liquor in with us.

Q. Who said that? A. A blonde captain.

Mr. SCHLESINGER.—I move to strike that out as not being binding on either of the defendants.

The COURT.—I will let it stand as part of the circumstances occurring there.

Mr. SCHLESINGER.—Exception.

WITNESS.—(Continuing.) Mr. Lardi then came up to our table and asked us if they had taken much of it off our table. We didn't answer him. We told him we were afraid of being arrested, and wanted our check. The check was brought; the amount was \$15.52. We then left our table, and at the entrance of Techau Tavern Mr. Lardi bid us "Good-night," and told us to come back at any time, that it would be as usual. The amount \$15.52 was paid, the same as the \$9.27. I then left. When Mr. Crawford, the prohibition agent, came to our table, he took the two glasses containing the highballs double-strength that Miss Simpson and I had

(Testimony of A. S. Rinckel.)

ordered. They were about half-full; each glass was half-full. We had drunk about half of it in stalling for time. They came in as per arrangement upon my reporting to Mr. Exnicios of the previous night. This raid was arranged and we all understood it, and this occurred in Techau Tavern, 247 Powell Street, in this city and county. (Tr. pp. 4-11.)

On cross-examination the witness testified as follows:

My present position is that of Federal prohibition agent. I was appointed the 27th of this month and after the information had been filed in this case. My brother swore to the information. I was not in the service of the Government when these things happened. We were authorized to make this investigation. My brother was a Government employee. He did not accompany me to Techau Tavern that night. He was there the following night, on the raid. [21]

Q. Were you promised a position in the event of your procuring evidence against the tavern?

A. I was promised a position before this, before this ever happened.

WITNESS.—(Continuing.) I had been out endeavoring to secure evidence in other cases for the Government.

Q. And upon the strength of success you were promised a position were you?

A. No, sir, I was not.

WITNESS.—(Continuing.) I was promised a

(Testimony of A. S. Rinckel.)

position by John Exnicios, who was then Prohibition Enforcement Agent, before this investigation ever took place. There were no conditions of that promise. My brother did not talk over with me the prospect of my receiving an appointment. Prior to my appointment I had helped in six previous cases to this. This is the first case in which I have testified.

Q. Did you ever in your life exchange any word with Mr. Morrison on the subject of selling liquor?

A. I never did.

Q. Do you know him?

A. I know him now. I never seen the man before I went in the Techau Tavern on July 29th.

Q. And how long had you known Mr. Lardi?

A. The first time I had ever seen him was July 29th.

Q. You told him you had known him, did you not? A. I told him I had known Mr. Morrison.

Q. That was not true, was it?

A. No, it was not. (Tr. pp. 11-13.)

Q. You told him you were a friend of Mr. Morrison's, did you not? A. Absolutely.

Q. And that was not true, was it?

A. No, it was not.

Q. Mr. Rinckel, when you entered Techau's on this occasion, you introduced yourself as Delmont, did you not? A. Belmont.

Q. Had you ever gone by that name on previous occasions? A. I have not, sir.

Q. That is not your name, is it?

(Testimony of A. S. Rinckel.)

A. It is not, sir.

Q. You were not appointed to the Government position under that [22] name.

A. No, I was not.

Q. Did you have any other employment on the date of your visit to Techau Tavern?

A. Yes, sir, I did.

Q. What was your employment?

A. I was helping managing an apartment house at 790 California Street.

Q. How long had you been in that job?

A. About a year.

Q. An apartment house downtown?

A. It was at 790 California Street, known as the Leesmount Apartment.

Q. And on that occasion you accompanied Miss Simpson, did you not?

A. To the Techau Tavern, yes, I did.

Q. Is that her right name?

A. That is the only name I know her by.

Q. She was not in the Government service at that time, was she? A. She was not.

Q. Is she now? A. She is.

Q. She is now? A. Yes.

Q. When was she appointed?

A. I do not know, sir; some time last month.

Q. She was appointed after the information filed in this case, and after this raid, was she not?

A. Yes, sir.

Q. Did she reside at the same apartment house with you? A. She did not, sir.

(Testimony of A. S. Rinckel.)

Q. You had known her a long while, though, had you not? A. I had not, no, sir.

Q. Was that the first time she had accompanied you on one of these raids?

A. On these investigations, do you mean?

Q. Yes.

A. Six times previously we investigated together six places.

WITNESS.—(Continuing.) That was the only place that we investigated that night, the 29th.

Q. Had you not been drinking that evening before you went to Techau's?

A. No, sir, I had not. [23] I met her at the Hotel Aldrich, that is on Jones Street, by appointment and for this purpose. Mr. Lardi is the first man in that establishment to whom I applied for a drink that night.

Q. Did you have any conversation with anybody else there with reference to procuring drinks?

A. I did not, sir.

Q. Do you know a Mr. Parrish, employed in that place as one of the captains? A. I do not.

Q. Do you know a Mr. Stratikes, some times called Brown, also employed there?

A. I do not.

Q. Did your companion, Miss Simpson, in your presence, have any talk with either Mr. Stratikes or Mr. Parrish? A. She did not.

Q. Was she with you during the whole time?

A. She was.

Q. Are you able to identify any waiter in the es-

(Testimony of A. S. Rinckel.)

Q. Establishment on that occasion, do you know any of them?

A. Well, I may know one of them by sight.

Q. You had been in there before, had you not?

A. No, sir, I had never been in there before.

Q. Had Miss Simpson been in there before?

A. I do not know, sir.

Q. Did you discuss that subject with her?

A. She said that she was known there.

Q. Do you know that she had applied for drinks there on previous occasions, and had been refused?

A. Yes, she said something about it.

Q. Did she not tell you that she knew of a waiter there who would furnish drinks?

A. She did not, sir.

Q. Did she mention to you the names of the waiters with whom she had an acquaintance?

A. No, sir, she did not.

Q. But she said she was known there? [24]

A. She said she was known by some of the waiters.

Q. Did you not on that occasion, and prior to this alleged talk that you said you had with Lardi, ask Mr. Parrish, one of the captains there, a man who had been there from some eight years, to furnish you with drinks? A. I did not.

Mr. SCHLESINGER.—(To Mr. PARRISH.) Stand up, Mr. Parrish.

Q. Do you recognize Mr. Parrish?

A. I do not.

Q. You did not see him on that occasion?

(Testimony of A. S. Rinckel.)

A. I don't remember him.

Q. Didn't you apply to this Mr. Parrish on that occasion for drinks? A. I did not.

Q. And didn't he say to you at that time that his house was not serving drinks?

A. I never have seen the man before.

Q. Mr. Stratikes,—do you know that man?

A. I do not.

Q. Did you apply on that night to him for drinks? A. I did not.

Q. Who was it that gave you your seat?

A. Oh, I think Mr. Lardi was the man.

Q. Mr. Lardi gave you your seat?

A. Yes, sir.

Q. Did you not apply to Mr. Stratikes for a better table, a table up in front: Do you recall that?

A. Yes, I recall something about a table, but I do not remember the man that seated us.

Q. Then you did apply to someone other than Lardi to have another table, that is, a table known as an inside table?

A. Yes, we applied for an inside table.

Q. Were you given an inside table?

A. We were not.

Q. Was it Mr. Lardi with whom you had that conversation?

A. No, it was some other gentleman we had that conversation with. [25] but I don't remember the man that we had the conversation with.

Q. Can you recall just what you said in that conversation, about getting another table?

(Testimony of A. S. Rinckel.)

A. No, I cannot.

Q. You are not able to say whether or not the man to whom you applied was either of the witnesses whom I have just pointed out to you?

A. I do not recognize either of those men.

Q. You will not say that one of them was not the man, will you?

A. I don't recognize them. Either one of them may have been the man, but I do not recognize them.

Q. Didn't the man to whom you applied state he would ask Captain Parrish whether he could give you a better seat than you had?

A. I don't remember that.

Q. Didn't he return to you, after you had made that request, and state that you could not be given any other table?

A. No, sir, he did not.

Q. What is the fact about that?

A. He may have spoken to Miss Simpson, but he never spoke to me.

WITNESS.—(Continuing.) I was not intoxicated on that occasion. I had not been drinking. I did not enter the place in rather an intoxicated condition.

Q. And isn't that the reason you were refused another seat—isn't that the reason?

A. You mean, sir, that I was intoxicated on that night?

Q. What reason was given why you were not given another table? Was there any reason given?

(Testimony of A. S. Rinckel.)

A. No reason.

Q. You were seated in the rear, weren't you?

A. The first night we were, yes, and the second night we were seated away up in front.

Q. I am talking of the night on which you claim Lardi served you with drinks: Where were you setting then? [26]

A. We were sitting on the side of the house, on the east side of the house, on the side of the dining-room.

Q. It was rather an obscure seat, wasn't it?

A. Yes, it was.

Q. And that is the reason you asked for a better seat? A. We never asked for a better seat.

Q. You asked for another table, didn't you?

A. The first night?

Q. I am talking of the occasion on which you state Lardi served you with drinks: Upon that occasion, where were you seated?

A. We were served by Mr. Lardi upon both occasions.

Q. Do you mean to say that Mr. Lardi escorted you to the table?

A. No, I cannot say that he did.

Q. Is it not a fact that Lardi did not escort you to the table, but that one of these two gentlemen took you to the table?

A. It may be one of those two men, I am not positive.

Q. Whether it may be or may not be, Mr. Rinckel, what is the fact about it?

(Testimony of A. S. Rinckel.)

A. I don't remember the gentleman that seated us.

Q. Why is your recollection on these subjects so dim? Are you able to say that. You have discussed this case, haven't you, quite recently, with Mr. McCormick, the special assistant, located permanently in San Francisco, and likewise with Mr. Geis, and likewise with your brother, Mr. Rinckel?

A. I have not.

Q. Is this your brother here, seated to the rear of Mr. Geis? A. It is.

Q. He is the other Mr. Rinckel? A. Yes, sir.

Q. Did you have anything to do, Mr. Rinckel, or was it your brother, with the re-filling of any bottles, on either of those [27] nights?

A. I did not, sir.

Q. Were you present when two bottles, small bottles were found on the top of a bar there?

A. I was not, sir.

Q. Did you have any participation in the re-filling of bottles taken from Techau's?

A. I did not, sir.

Q. What time of the night was it you entered Techau's?

A. The first time was about 11 o'clock on the 29th of July, and the second time was about half past seven on the 30th of July, the evening of the 30th.

Q. To whom did you pay the checks for the meals you had? A. To a waiter.

Q. Are you able to identify the waiter?

(Testimony of A. S. Rinckel.)

A. I am not.

Q. Did you pay any money at all to Mr. Lardi?

A. I did not, only a tip.

Q. Did you pay any money at all to this waiter in the presence of Mr. Lardi?

A. No, I cannot say that Mr. Lardi was present at that time.

Q. Don't you know, Mr. Rinckel, that on that occasion the house was pretty well filled up, perhaps about 400 or 500 guests—isn't that true? A. Yes.

Q. The tables were all occupied? A. Yes, sir.

Q. Did you know any of the guests there that night? A. No, sir.

Q. Any of your friends there?

A. No, I have no friends who go there.

Q. You know, do you not, that there was a great army of employees there, numbering between 125 and 150?

A. Yes, I know it is a very large place.

Q. But you are not able to give the name of the waiter to whom you paid your check?

A. I am not. [28]

Q. As a matter of fact, wasn't it the same waiter who you claim had served you with drinks?

A. Mr. Lardi served us with drinks.

Q. Did Mr. Lardi serve you with meals?

A. No, he did not.

Q. Did Mr. Lardi give you any check?

A. No, the check was given by another waiter.

Q. Mr. Lardi gave you no check? A. No.

Q. Have you that check? A. No, I have not.

(Testimony of A. S. Rinckel.)

Q. Did you read the check? A. Yes, sir.

Q. Do you know who made out the check?

A. No, sir, I do not.

Q. Did the waiter who gave you this check resemble either of the two men pointed out to you?

A. I never paid any attention to him, sir.

Q. You do not even recall, do you, having seen either of those men in that place on that occasion?

A. No, I do not, sir.

Q. Had you ever been introduced to Mr. Morrison? A. I never had, sir.

Q. You had no more acquaintance with him than you had with any other employee of that establishment? A. I had not, sir.

Q. Do you know Mr. Carleton Wall—he is not here just now—the President of the Techau Tavern Company? Do you know Mr. Carleton Wall?

A. I do not, sir.

Q. Well, in a word, you say that Mr. Morrison never served you with drinks, nor—

Mr. GEIS.—Now, don't get that mixed, Mr. Schlesinger, he didn't say Mr. Morrison served him.

Mr. SCHLESINGER.—I understand that; that is just what I am saying.

Q. Mr. Morrison didn't serve you with drinks, was not present at the collection of the check, and so far as you know had nothing [29] to do with the making out of the check?

A. I don't know what Mr. Morrison did in regard to making out the check, but Mr. Morrison was not present when the check was paid.

(Testimony of A. S. Rinckel.)

Q. Was he present when this so-called order of yours was given? A. He was not.

Q. Did these drinks, which you say you procured there from Mr. Lardi—were those drinks served during your meal or after your meal?

A. They were served during our meal, sir.

Q. And they were served, were they, long before you had finished with your meal? A. Yes, sir.

Q. Is that true, Mr. Rinckel?

A. Yes, on the second night; the first night we didn't have anything to eat at all, on the 29th of July, nothing but drinks.

Q. Did this check, or these checks—by the way, was there one check or two? A. One check.

Q. Your female companion did not pay the check, you paid it?

A. I paid the check, yes.

Q. Did that specify any liquors?

A. It did not.

Q. Was it an itemized check?

A. It was.

Q. Itemizing the different articles of food which you had obtained?

A. Yes, sir. (Tr. pp. 14-23.)

On redirect examination said witness testified as follows:

Mr. GEIS.—Q. When you speak about introducing yourself to Mr. Morrison, was it the gentleman sitting on the other side of the table here, the man with the black mustache? A. It was.

Q. And as to that being Mr. Morrison, or the

(Testimony of A. S. Rinckel.)

man with whom you spoke that night, in which you stated you had known him at the other place, that was Mr. Morrison, wasn't it?

Mr. SCHLESINGER.—He didn't say he knew him at the other [30] place, he said he had been at the other place. According to his admissions, he says he did not know him.

Mr. GEIS.—I realize that.

Q. You can't be mistaken about it being the defendant here, the gentleman who is seated there on the other side of the table, he is the man to whom you spoke that night, is he?

A. He is the gentleman.

Q. And you cannot be mistaken as to the other defendant sitting back there, and known now as Mr. Lardi, and with whom you spoke afterwards?

A. Yes, that is Mr. Lardi.

Q. You said you didn't pay any money to Mr. Morrison. Did you pay any money of any kind or for any purpose to Mr. Lardi?

Mr. SCHLESINGER.—One moment, your Honor, he has testified to that on direct examination.

A. A tip only; I gave him a tip.

Mr. GEIS.—Q. How much?

A. I paid him \$2 the first night, \$1 going in and \$1 coming out, and on the second night I gave him \$2, \$1 coming in and \$1 going out.

Q. That was paid directly to Mr. Lardi?

A. It was, sir. (Tr. pp. 23, 24.)

(Testimony of A. S. Rinckel.)

On recross-examination the witness testified as follows:

Mr. SCHLESINGER.—Q. You paid Lardi a tip? A. Yes.

Q. How much?

A. A \$1 coming in and a dollar going out the first night, and a dollar coming in and a dollar going out the second night.

Q. And you gave him that tip, did you not, at the times you paid the check?

A. After we paid the check.

Q. After you paid the check? A. Yes.

Q. You have just testified that you do identify Mr. Morrison here as one you had seen at the Tavern that evening? A. Yes. [31]

Q. But you are not able to identify anybody else, are you? A. I am not, sir. (Tr. p. 24.)

Testimony of G. H. Crawford, for the Government.

G. H. CRAWFORD, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I am a Federal prohibition agent and have been such for about a year and six or seven months, or something like that, and have been a prohibition agent up to the present time. I was such in the month of July of this year. I know the location of the Techau Tavern. I believe 247 Powell Street is the number. I was at that place on the evening of the 30th day of July of this year, in company with about half a dozen, or something like that, of pro-

(Testimony of G. H. Crawford.)

hibition agents. I think I went there about 9:30 or ten o'clock in the evening. I don't know the exact hour, and I was acting as a prohibition agent when I went there under the direction of my superior officer, Mr. Exnicious.

Q. Will you relate to the Court and the jury briefly just what occurred, and what your duties were, and what you did under those duties as prohibition agent there that evening?

Mr. SCHLESINGER.—If your Honor please, I will preserve the objection heretofore made, upon the grounds enumerated, and also our exception.

The COURT.—All right.

A. It was understood before I entered the premises, that I was to locate the other agents who were in the premises, and seize whatever liquor was on the table. That was my instructions upon going to the place, to the premises, and to pay no attention to anything else but to get to that table. I located the two parties, Mr. Rinckel and Miss Simpson, at a table to the left-hand of the door as we entered, sitting at a small table by themselves, and upon that table were, among other little things, [32] dishes, and so forth, two glasses containing what I took for granted at that time was liquor. They were in—I would call them a thin beer glass, about that height, I guess it was as big around as that, about two and a half inches, or something like that across the bottom, and about six inches high; that is approximating it as near as I can, a good sized beer glass, thin glass. I seized that liquor and took it to

(Testimony of G. H. Crawford.)

the point of assembling agreed upon, where we would assemble with any liquors that were seized, to the front of the place, where Agent Wolf was.

These two glasses that I seized upon that table I took to the central part where we were assembling the liquor, where Agent Wolf was standing. There was no bottle there; our young chemist was there with him, and I asked him if he would get me a bottle. I got a bottle; a bottle was secured by another party for me to put this liquor in. While I was placing it in the bottle, one of the agents was writing a label. I poured that liquor into a bottle and wrote on that bottle in my own handwriting that that was liquor taken from the table.

Mr. GEIS.—Q. I hand you, now, a bottle, and ask you if that is the identical bottle into which you poured the liquor which you secured from Mr. Rinckel's and Miss Simpson's table on the evening of the 30th of July of this year?

Mr. SCHLESINGER.—I object to that because it is not shown to have been in the possession of either one of the defendants, and therefore it is incompetent.

The COURT.—Objection overruled.

Mr. SCHLESINGER.—Exception.

A. This is my handwriting on the bottle. After the label was placed on the bottle with my hands, and in my presence, I wrote [33] on this, "Taken from Rinckel's table by D. H. C." Those are my initials. This is Wolff's handwriting over here, but this is my handwriting.

(Testimony of G. H. Crawford.)

Q. You recognize the bottle? A. Yes.

Q. And you put the liquor that you got off the table into this bottle? A. Yes.

Mr. GEIS.—I will read this into the record, because it might get mislaid in some way. It is marked, "United States Internal Revenue, Prohibition Enforcement Division." On the left-hand corner, as you face it, it says, "R. T. L. Chemist; No. 3098. Dated July 30, 1921, at Techau Tavern, San Francisco. Two glasses taken from Rinckel table by D. H. C. R. A. Wolff." And then there is some printing on it. We offer this in evidence for identification, and ask to have it marked for identification United States Exhibit 1.

Mr. GEIS.—Q. After that had been poured into the bottle, what did you do with the bottle?

A. The bottle was retained in his possession by Mr. Wolff under my instructions.

Q. Mr. Wolff is also a prohibition officer?

A. Yes. After it was caught, it was placed in a box. We carried that to a little room, what I would call a kind of a kitchen or a serving room, to the right of the dining-room, where the liquors were all finally assembled, and all placed in a box to be finally delivered to the chemist. Other agents took possession of the entire liquor, and delivered it to the Government chemist. (Tr. pp. 25-29.)

On cross-examination the witness testified as follows:

On July 30th between 9 and 10 in the evening we went to a table in Techau's restaurant, and I found

(Testimony of G. H. Crawford.)

seated at a table there, in the [34] situation I have already described, the witness Rinckel and the woman Miss Simpson, who is not here now. I would not say that that table was situated in rather an obscure place. I could see the entire dining-room. I don't think there was anything I could not see in the dining-room. As you go in the main door, in the main entrance, like going in the door here, in the central part it was just to the left; there was a whole row of tables along here. It was a little table to the left of the door as you go in; they were seated in there, just a little ways in. The place was filled up with people. I would not estimate how many there were; there was quite a crowd there. I had these other tables in full view.

Q. Your coming there was not announced to the management, or to anybody else, was it? You didn't notify them you were coming there to make a raid, did you?

A. No, we didn't send any telegram, or anything like that. The manager was notified by the search warrant.

WITNESS.—(Continuing.) I found on this table at which my now associate in office was seated, a couple of glasses. I would say they contained liquor. I tasted from one of the glasses myself. The only thing I did was I put one of the glasses to my lips to see what it tasted like. I would say there was alcohol in the drink. I examined later,

(Testimony of G. H. Crawford.)

but not right at that moment, the other tables at Techau on that occasion.

Q. Did you find on any table in Techau's restaurant—any tables—anything that resembled liquor, among those 450-odd guests?

A. There was one bottle that I took from one other table. This was my specific duty, to go to this one table first. I found another table with liquor on it. I think there is another bottle there, branded, that I took from another table.

Q. You went there to make a search for liquors, did you not? [35] A. I did, yes, later.

Q. Other than what you have testified to, did you find any liquor upon any table in that restaurant upon that occasion? A. Yes.

Q. Other than what you have testified to?

A. Other than this liquor that you are talking about here.

Q. Now, you have added that you have found another bottle? A. I found it in a glass.

Q. Other than those two instances, among those several hundred guests, did you find any other liquor at all upon that occasion? [36] Yes or no. If so, where is it?

A. No, I didn't find the other liquor myself; somebody else found it. I found liquor on two tables.

Q. I am asking you what you found on these tables. You were there, were you not, during the entire raid?

A. Well, yes, I was there most of the time.

(Testimony of G. H. Crawford.)

Q. Were you not there all of the time?

A. All of the time, yes.

Q. With whom did you enter that place?

A. We all entered together.

Q. And with whom did you leave?

A. We all left in a body, the same as we entered, as far as my knowledge goes. I don't know if anybody left ahead of me. I think some of the others did leave ahead of me, but who they were I don't know. I was in the general body of men when they went in there.

Q. How many were there in that raiding party?

A. Now, let me see; there was Mr. Rinckel, Mr. De Spain, Mr. Kupser, Mr. Wolff, Mr. Shurtleff, Mr. Wheeler, and myself. I don't know—that might not be all of them, but I think that is as near as I can tell them now out of my head.

Q. There were as many as a dozen, weren't there? A. No, I don't think there were a dozen.

Q. Six or seven? A. I think about seven.

Q. At any rate, those named by you were there?

A. Yes, and I was among the number.

Q. Was there examination made of the main dining-room where the guests were assembled?

A. I think there was.

Q. After that examination was made, did you go to what is known as the servant's bar, near the kitchen? A. No, I did not myself, personally.

[37]

Q. Didn't you accompany the men there on that occasion?

(Testimony of G. H. Crawford.)

A. I stayed up in the other part where the liquor was being assembled; I didn't go down there.

Q. Have you ever examined the Techau Tavern premises?

A. The only time I was ever in there was that night.

Q. Do you not know that adjoining the kitchen there are a great many lockers which are occupied by the waiters and the various employees?

A. I had nothing to do with that part of it.

Q. Let me ask you about this bottle: Did you find that bottle there?

A. I didn't find it there, no.

Q. Was this bottle ever found there?

A. The bottle was brought to me by the chemist, empty.

Q. This bottle, as a matter of fact, was not there. Isn't that true? I am asking you on your official knowledge? A. It was got on the premises.

Q. Do you know who helped fill the bottle?

A. I filled the bottle myself, personally.

Q. What did you fill it from?

A. From the two glasses taken from the table which Rinckel and Miss Simpson were seated. I held those glasses in my personal possession until they went into that bottle.

Q. In other words, you filled this bottle from those two glasses?

A. Yes, absolutely. That bottle was clean, perfectly clean, when that was put in there.

Q. Do you know Mr. Morrison?

(Testimony of G. H. Crawford.)

A. Only just by sight; I never saw him before in my life. That night was the first time I ever saw him.

Q. You saw him there that evening after the raid?

A. That was the only time to my knowledge I had ever seen Mr. Morrison. [38]

Q. After the raid? A. During the raid, yes.

Q. Did you have any conversation with him?

A. I did not.

Q. Did any of your associates have any conversation with him?

A. I am not competent to say. I do not know what they did.

Q. Did you overhear any? A. No, I did not.

Q. Did you hear him say that they could search the place from top to bottom? A. No, I did not.

Q. As a matter of fact, there was a thorough search made there, was there not, without any interference on his part. Isn't that true?

A. Oh, surely.

Q. Now, coming back to Miss Simpson and Mr. Rinckel, do you know how long they had been there before you arrived?

A. Not exactly, no. I know they had been in there a few minutes before we came, I don't know just how long they had been there, some little time.

Q. Had they paid their checks?

A. I don't know nothing about that at all.

Q. Did you observe their condition that night as to sobriety? A. I did.

(Testimony of G. H. Crawford.)

Q. Did you talk to them? A. Yes, sir.

Q. You talked with them both?

A. I spoke to them both right there at the table.

Q. Did you remove this liquor while they were there?

A. Absolutely, right while they were sitting there.

Q. You were not there while they were being served, were you?

A. No; the liquor was waiting—standing on the table, when I came in.

Q. Who placed it there, assuming that it was found there, you have no personal knowledge as to that?

A. Oh, I know nothing about that, no. [39]

Mr. SCHLESINGER.—I think that is all. Now, do you offer this in evidence, Mr. Geis?

Mr. GEIS.—If you have no objections, I will.

Mr. SCHLESINGER.—Well, it is a part of your case.

Mr. GEIS.—Do you object?

Mr. SCHLESINGER.—I am not called upon at this time to object, you have not made any offer. [40]

Mr. GEIS.—Well, you asked me about it. I admit it is not admissible in evidence at this time, if you object to it. But I will offer it now, and see if you will object to it. I offer this now in evidence.

Mr. SCHLESINGER.—I don't object to it, if you will connect it.

(The bottle was here marked "U. S. Exhibit 1" in evidence.) (Tr. pp. 29-35.)

(Testimony of G. H. Crawford.)

On redirect examination the witness testified as follows:

I would say positively that Miss Simpson and Mr. Rinckel were both sober. (Tr. p. 35.)

Testimony of R. A. Wolff, for the Government.

R. A. WOLFF, called as a witness on behalf of the United States, being first duly sworn, testified as follows:

I am a prohibition agent and have been since prohibition has been in effect. On the 30th day of July of this year I was at the Techau Tavern with the balance of the prohibition officers. As we entered the café proper, I took up a station right at the door, where there was a little desk that is used by the waiters, I presume it is used by the waiters, and I stood there while the other agents brought to me the liquor they had seized from the various tables, and I kept charge of that until such time as we had it bottled, labeled, and put away.

Mr. GEIS.—Q. Mr. Wolff, Mr. Crawford brought you several bottles that night, did he—at least one?

A. Not Mr. Crawford. The chemist brought the bottles in, and Crawford and I filled them.

WITNESS.—(Continuing.) I labeled and initialed some of the bottles. That is my handwriting. All the liquor that was taken off the tables was delivered to this little desk and delivered to [41] me and I labeled them. The liquor that was taken off the various tables by the different agents was brought to this little table, and I was in charge of

(Testimony of R. A. Wolff.)

that little table, and kept charge of it, and I put it into bottles and labeled them.

Mr. GEIS.—Q. I hand you another bottle. Is that your handwriting on there? A. Yes, sir.

WITNESS.—(Continuing.) That is one of the bottles delivered to me that evening by Mr. George H. Crawford. It is marked on there “taken from tables.”

Mr. GEIS.—Q. I hand you another bottle; I am not sure whether that is in your handwriting or not. Do you remember that bottle being delivered to you, and if so, by whom?

A. No, I don't know anything about this bottle.

Q. All right, we won't bother with that one. What number of persons, and the names of the persons, were there who brought you bottles there that evening—I mean prohibition agents?

A. I believe there were Crawford, Doyle—those are about the only two. The little chemist—I forgot what his name is, I think it is Adner, or some such name as that, he brought in some bottle from the tables.

Q. How about Kupser and Wheeler?

A. No, sir; they worked in the other part of the house.

WITNESS.—(Continuing.) Those bottles had not been given to him. These agents, Crawford and Doyle, worked around the main dining-room, and gathered a few glasses off the tables, and these other boys went to other parts of the house, scattered throughout the building. I stayed by the

(Testimony of R. A. Wolff.)

little desk, and kept the liquor that was brought to me there. It was in the glasses and then we put it in the bottles. It was finally all taken into the back end of the café and delivered to Rinckel and some of the boys and it was put in boxes.

Q. Rinckel and De Spain?

A. Yes; there were several of them [42] back there. The liquor was finally assembled there by me. I finally turned it over to Rinckel and De Spain. We took it to the back of the house, where several of the boys were, I don't know whether anyone was particularly in charge, and we labeled them and put them in the box. The liquor that was brought to me and assembled in the box I turned over to Rinckel and De Spain in the same condition in which it was brought to me. (Tr. pp. 36-39.)

On cross-examination the witness testified as follows:

Mr. SCHLESINGER.—Q. I will just simply assist your memory, Mr. Wolff, and not contradict you at all. Do I understand that these bottles here, take this bottle, for instance, was that found in any part of the Techau Tavern?

A. Let me see it please.

Q. This is just simply to assist your recollection on the facts, Mr. Wolff.

A. That I don't know anything about, I have no knowledge of it whatever.

Q. Is it not a fact that there was a refilling of some of the bottles—that Rinckel and Rinckel's

(Testimony of R. A. Wolff.)

associates picked up a couple of bottles at some obscure place on the bar, after having searched the lockers, and searched every part of the premises there, they found some stuff in a couple of large bottles, and from those large bottles they filled these smaller ones?

A. I could not tell you anything that took place in the other room, outside of the main dining-room. I was in the main dining-room the major part of the time.

Q. Assuming that to be the fact, Mr. Wolff, if it is a fact, what was the purpose of having taken the two large bottles that they had found there, and refilling these smaller bottles, what was the idea of doing that? A. I don't know. [43]

Q. Was it to make it appear that they made a great big raid there, to spread it out?

A. No, I don't think so. (Tr. pp. 39, 40.)

**Testimony of G. H. Crawford, for the Government
(Recalled).**

G. H. CRAWFORD, recalled for the United States, testified as follows:

Mr. GEIS.—Q. You spoke about a bottle that you picked up from a table. I hand you a bottle, and ask you if that is the bottle you referred to in your former testimony as having picked up from a table on that night?

A. Yes, that was taken from another table.

The COURT.—It was not the bottle?

A. No, it was the liquor, your Honor. It was

(Testimony of G. H. Crawford.)

taken from another table, not the table that Simpson and Rinckel were sitting at.

Mr. GEIS.—Q. And that was assembled with the other liquor?

A. Yes, that was assembled with the other liquor, and then marked as the others.

Mr. GEIS.—We offer this for identification.

(The bottle was here marked “U. S. Exhibit 2 for Identification.”) (Tr. p. 40.)

Testimony of V. H. De Spain, for the Government.

V. H. DE SPAIN, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I am a prohibition agent and have been for mostly two years. I was present with the other officers of the prohibition force on the evening of July 30th of this year at Techau Tavern as one of the raiding officers, and during that period of time that I was there I came across intoxicating liquor.

Q. I now hand you four bottles and I will ask you first about this one; is that one of the bottles that you found? A. Yes, it is. [44]

Q. And this other one, is that one also?

A. Yes.

Q. And is this still another? A. Yes.

Q. And also this one, being the last one of the series of four? A. Yes.

Q. Where did you find those bottles—I mean the liquor that is in them? Then first I will ask you, are those the identical bottles you found?

(Testimony of V. H. De Spain.)

A. They are.

Q. And whatever was in them, so far as you know, is still in them?

A. It is, so far as I know.

Q. Where did you secure them?

A. I found them downstairs in Mr. Morrison's private office, that is, a little room off his private office, where I found these three, and Mr. Shurtleff and I found the other one in the office.

Q. Whereabouts in the office, if you know?

Q. Where he keeps files of his books, and the likes of that, and stationery—in one of those drawers.

Q. What did you do with those four bottles you have just testified to, after you found them?

A. I took them upstairs, and put them with the rest of the liquor that we were gathering.

Q. And who was stationed there near where they were being gathered.

A. Mr. Wolff.

Q. He is also a prohibition officer?

A. He is also a prohibition officer, yes

Q. After the liquor, or the bottles and whatever they contained, has been taken to Mr. Wolff and finally assembled, what became of the box and the liquor then?

A. Mr. D. W. Rinckel and myself took them to the appraiser's building, and locked them up in our storeroom.

Q. Then what was done with them?

A. We took them up to Mr. [45] Love.

(Testimony of V. H. De Spain.)

Q. And by Mr. Love were brought down to the courtroom? A. Yes.

Q. Now, so far as you know, and so far as you are able to testify, are those four bottles in the same condition now—save perhaps as to what was taken out to analyze it—as they were when you found them in the Techau Tavern?

A. They are. (Tr. pp. 40–42.)

On cross-examination the witness testified as follows:

Mr. SCHLESINGER.—Q. On that occasion, I think it was the 30th day of July, you and a large number of your associates made a thorough search of the premises, did you not, the Techau Tavern?

A. Yes, we searched the premises.

Q. That is a very large place, isn't it?

A. Yes.

Q. A large dining-room, and a very large kitchen, and a storeroom; am I right about that?

A. Yes.

Q. Mr. Morrison has two offices there, has he not, one off the dining-room, a small office, and another one, slightly larger, down there adjacent to the kitchen: Am I right about that?

A. I did not see the other office, but I know he has the office downstairs.

Q. He has one office downstairs that you know of? And when you entered the office, was Mr. Morrison there?

A. Not at the time. There was a bookkeeper there, I think, some man in charge.

(Testimony of V. H. De Spain.)

Q. A bookkeeper was working on the books?

A. Yes.

Q. And the office was open?

A. No, there was a catch on the door; he opened it for me.

Q. You told him what your business was there?

A. Yes, sir. [46]

Q. Did he make any objections to your making a search of the place? A. No.

Q. And you thereupon proceeded with your search? A. Yes.

Q. And you found, as I understood you to say, this bottle—I presume it contains—

A. Red wine.

Q. Red wine? A. I think so, yes.

Q. You have not sampled it?

A. No, I have not sampled it.

Q. And this other bottle contains red wine?

A. Red wine, yes.

Q. Where in Mr. Morrison's office, did you find it?

A. In a little store off the office, a little room off the office, I found those three in there.

Q. These three? A. Yes.

Q. What is that, do you know?

A. That is some kind of liquor, I think an after-dinner cordial, I am not sure.

Q. A sort of a cordial?

A. An after-dinner cordial.

Q. You found it there in a storeroom—in a locker? A. No, not in a locker.

(Testimony of V. H. De Spain.)

Q. What do you mean by a storeroom, I don't understand you?

A. It is a little room off his office where he had a number of things stored, I don't remember just what, I think there was some stationery there.

Q. Now, as a matter of fact, you didn't find this in Mr. Morrison's office, did you?

A. I found it right off that office, yes, but not in the office.

Q. As a matter of fact, the kitchen is off the office, isn't it?

A. Yes, but there is no entrance to this other than thru his office.

Q. You can go thru his office and into the storeroom; won't you please describe to the jury, because you have already said you [47] found that in the office, won't you describe to the jury as best you can just what that storeroom is, as to its width and length and general arrangement?

A. It is small, I think it would be about six feet by about ten feet, or eight feet—six feet by eight.

Q. Six by ten or six by eight?

A. Six by eight.

Q. And that storeroom is used as you ascertained there, for what purposes generally?

A. There were shelves there, and there were a number of things, I didn't notice what they were, but there were a number of things in it.

Q. Some merchandise? A. Yes, some towels.

Q. Towels and things? A. Yes.

Q. Isn't there a washstand there?

(Testimony of V. H. De Spain.)

A. I don't remember about the washstand. There could be a washstand there, I don't know.

Q. Adjoining the storeroom is the kitchen, is it not? A. Oh, no.

Q. Is the kitchen on the same floor as the office?

A. It is on the same floor, but it is up from there, it is removed from there.

Q. In what part of the storeroom did you find this stuff, this little red wine and this little colored tonic, or whatever it may be, in what part of the storeroom did you find it?

A. I removed some packages, and setting right in back of the packages on the floor were these two bottles. At the other end of the storeroom behind some other packages, I got that other bottle.

Q. They were not exposed to view?

A. No. They were behind these packages.

Q. And you had to remove that stuff in order to observe the bottles, did you?

A. I was looking for liquor.

Q. You found also in there, did you not, a very large storeroom [48] which was filled with merchandise of all kinds?

A. This was not the storeroom at all. The storeroom where they kept all the supplies was in the extreme other end of the building.

Q. You found a storeroom in which the supplies are kept, in the other end of the building?

A. Yes, sir.

Q. Did you make a search of that room, Mr. De Spain? A. I did.

(Testimony of V. H. De Spain.)

Q. You made a very thorough search, didn't you?

A. We thought we did.

Q. You tried to do the best you could, with the aid of your half dozen or more assistants; did you find any wines or liquors of any kind there?

A. I did not. This is all I found.

Q. Do you not know that this storeroom which you have just described had a telephone exchange in it—in this so-called storeroom?

A. No, that is out of that room and around into another room where the telephone exchange is.

Q. And do you not know that it has a typewriting desk there, and a typewriting machine?

A. I didn't notice that.

Q. Don't you know that it was occupied by others than Mr. Morrison?

A. I don't know anything about it; the book-keeper told me that it was his office.

Q. You made an examination, didn't you, of what is known as the service bar. Do you recall that? Did you aid in that examination? A. No.

Q. Did you make any examination of the tables at which the large number of guests were seated?

A. No.

Q. Did you make an examination of the kitchen?

A. I did, yes.

Q. Did you find any liquor in it? A. No.

Q. Did you make an examination of the lockers?

A. No. [49]

Q. Did you not notice there a great many lockers, used by the employees there?

(Testimony of V. H. De Spain.)

A. I did not. Some of the other agents might have, but I didn't.

Q. That was not done in your presence, Mr. De Spain? A. No.

Q. Did you examine the tables of the main restaurant that night? A. No.

Q. Then all you found, as I understand it, was these bottles partly filled as they are now?

A. That is all.

Q. Did you also find this flask there?

A. Mr. Shurtleff and I together found that.
(Tr. pp. 42-46.)

On redirect examination the witness testified as follows:

Mr. GEIS.—Q. You say there is no entrance to this little place except thru Mr. Morrison's room?

A. That is all.

Q. And no outlet, except as you went in?

A. No, you cannot go on thru, you have to come back thru the same door. (Tr. p. 46.)

On recross-examination, the witness testified as follows:

I went in from the Geary Street entrance direct to the basement and I did not examine the tables. There are two entrances: one from Powell and one from Geary, and I went in the Geary Street entrance. (Tr. p. 47.)

Testimony of H. M. Kupser, for the Government.

H. M. KUPSER, a witness called in behalf of the United States, being first duly sworn, testified as follows:

I am a prohibition agent and have been since the time prohibition went into effect. I was present with the other officers on the evening of July 30th of this year. I went to Techau Tavern as a prohibition agent under the direction of Mr. Exnicios. It was about 9:30 in the evening when I went there. As we entered the premises, Agent Wheeler and myself were together, and we noticed a waiter running toward the rear of the Techau [50] Tavern premises; Agent Wheeler and I followed him to the best of our ability; this waiter ran to the back bar or serving bar back of the dining-room and we there noticed the bartenders attempting to destroy evidence behind the bar. Agent Wheeler got over the bar first, and secured some liquor which was being dumped by one of the bartenders. I got over the bar also and there we seized five bottles, and we took a sample of the liquor of which one of the bartenders was attempting to destroy by pouring it into the sink. We found in all behind the bar—there was one bottle of wine, that black bottle is the wine.

Q. The bottle I now hand you is the one you refer to? A. That is the one.

WITNESS.—(Continuing.) There were three pint bottles containing whiskey, those three that you now have in your hands. There was one quart bottle about two-thirds full of cocktails, and it is the

(Testimony of H. M. Kupser.)

bottle that you now exhibit to me. And a small flask there, half a pint was the flask which Agent Wheeler procured after the liquor was dumped from another container by one of the bartenders in my presence.

Q. Those are the six bottles? A. Yes.

WITNESS.—(Continuing.) After securing the bottles that I have identified they were taken and later labeled and put with the other liquors seized. Before coming into the courtroom, I examined all the labels that are on the bottles at the present time, the labels that were placed there that evening, and they are in the same condition and the same data upon them, and as far as I know the bottles, labels and the contents are the same as I secured there on the evening of July 30th of this year in Techau Tavern, 247 Powell Street, in this City and County. (Tr. pp. 47, 48.) [51]

On cross-examination the witness testified as follows:

Mr. SCHLESINGER.—Q. Mr. Kupser, did you find this bottle at the service bar? A. Yes, sir.

Q. Where is the service bar?

A. The service bar is in the rear of the dining-room, toward the Geary Street entrance.

Q. You found there a very large stock, did you not, of soft drinks, cider, soda water, sarsaparilla?

A. Yes.

Q. In fact, the entire bar was practically filled up and lined up with stuff of that character: is not that true? A. Yes, sir.

(Testimony of H. M. Kupser.)

Q. Did you find this exposed on the bar, or on any of the shelves of the bar?

A. It was found in the bar premises.

Q. Wasn't it really found—just to assist your memory—underneath the bar, at the places where the glasses are washed?

A. This bottle there was found among the other bottles on the drain board of the service bar.

Q. Exposed to view? A. It was there, yes.

Q. And the cork had not been drawn?

A. The cork was drawn.

Q. Had any of this been taken out?

A. The bottle apparently was full.

Q. You found a bartender there, did you?

A. There were two of them.

Q. Did you find any other liquors at that bar?

A. Yes, sir.

Q. What were they?

A. Those bottles, as stated, and so marked.

Q. Were these same bottles found at the bar?

A. Those same bottles were all found at the serving bar, yes.

Q. Were they found underneath the bar or on top of the bar?

A. Some of them were found on the back bar of the service bar.

Q. That is to say, a man entering the bar would not have these exposed to his view, would he?

A. Two of those bottles were [52] found, as I stated, on the back of the service bar, in other words, lying back on a sort of a shelf.

(Testimony of H. M. Kupser.)

Q. But not in view of anyone coming to the bar?

A. No, sir.

Q. Am I right about that? A. Yes, sir.

Q. And what other liquors, if any, did you find there, secreted or hidden as were those two bottles, if you found any? A. That was all.

Q. Was there anyone at the bar at that time?

A. The two bartenders were there.

Q. Mr. Morrison was not there, or Mr. Lardi?

A. If he was, I don't know it.

Q. Did you make a thorough search of the premises there? A. Of the bar premises, yes.

Q. Did you search the storehouse?

A. I did not.

Q. You know that was searched?

A. Some of the other agents were searching.

Q. And nothing was found?

A. I don't know what they found, I can only answer as to what I found.

Q. These two bottles, when they were found, were filled up, weren't they?

A. No, they were not quite full.

Q. Did one of them contain more than it contains to-day? Is it not a fact that stuff was taken out of these bottles and put into other bottles?

A. No, sir.

Q. That is not the fact? A. No, sir.

Q. You did not join in a search of the other part of the premises? A. I did not.

Q. Not of the tables? A. No, sir.

Q. And you were not there when liquor was taken

(Testimony of H. M. Kupser.)

off the table occupied by Miss Simpson and Mr. Rinckel? A. I was not.

Q. Did you ask the bar keeper in charge there as to the reason [53] of this being there?

A. No, we did not.

Q. Did you talk with them at all upon the subject?

A. No, we didn't have anything to say to them.

Q. You didn't examine the kitchen, did you?

A. No, sir.

Q. Didn't you afterwards, Mr. Kupser, return to Techau Tavern, and take with you a number of bottles, and aid in refilling them? A. No, sir.

Q. Didn't you take any bottles there at all?

A. Only those that were seized by Mr. Wheeler and myself.

Q. Did you take any empty bottles there?

A. I did not, no, sir.

Q. Did anybody of your party take any bottles there?

A. I cannot answer the question; I am only answering for myself.

Q. Do you know what the fact is? Well, if you don't know, all right. That is all. (Tr. pp. 49-51.)

Testimony of D. W. Rinckel, for the Government.

D. W. RINCKEL, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I have been a prohibition agent continuously since March 10, 1921, and as such officer I went to

(Testimony of D. W. Rinckel.)

Techau Tavern on the 30th of July of this year. I handled the search-warrant, and in fact, handled the raid, and was in charge and control of the other officers that night, and made so by Mr. Exnicios.

Q. Now, proceed and tell us just what you did from the time you went in there.

A. We went to the Techau Tavern at 9—at 9:30. We agreed to meet at that time with the other agents, Miss Simpson and my brother were there. They were to have the liquor on the table at that time, 9:30 sharp. We went there. I told Mr. Crawford to go to that table and get the liquor, which he did. I told Mr. Wolff to stay close to the door there and collect [54] the liquor that was brought to him by other agents. We went to the back room afterwards, behind the service bar, and we found two men there, bartenders, who had been dumping and destroying the liquor. Mr. Kupser and Mr. Wheeler were behind the bar there collecting the liquor at that time.

Q. Did you see Mr. Morrison there that evening?

A. I did. When we entered, I met a waiter there, and asked him if he would show me to Mr. Morrison, and tell Mr. Morrison to come up, as we had a search warrant for the place. He said he would. He went back and told Mr. Morrison—I believe he told him, because he went right up to him, and Mr. Morrison immediately turned and went out the back and I went back there and served the warrant on him.

Q. The Mr. Morrison you have reference to, and

(Testimony of D. W. Rinckel.)

who, after the waiter spoke to him, went out, is the same Mr. Morrison who sits here? A. Yes.

WITNESS.—(Continuing.) I remained there during the time of the search. After the search was made, the liquor that was found was accumulated in a box by Mr. Wolff. We took it from there to the appraiser's building, and it was placed in the storeroom. The liquor that was placed in the box there that night at the time I took it from the Techau Tavern to the Customs House, and to the chemist, was in the same condition it was when it left the Techau Tavern? (Tr. pp. 51-53.)

On cross-examination the witness testified as follows:

I did not aid in the search of the premises that night, and I did not make any search of the kitchen, or the bar, or any of the places there at all. (Tr. p. 53.)

Testimony of R. F. Love, for the Government.

R. F. LOVE, a witness called in behalf of the United States, being first duly sworn, testified as follows: [55]

I am now and have been for a number of years the Government chemist located at the Customs House in this City.

Q. I now hand you the four bottles which were testified to by Mr. De Spain as having been found in the office of Mr. Morrison, and I ask you if you analyzed the contents of those four bottles?

(Testimony of R. F. Love.)

The COURT.—You had better take them one at a time.

Mr. GEIS.—Q. Did you analyze the contents of this bottle that Mr. De Spain testified to?

A. Yes.

Mr. SCHLESINGER.—Your Honor, that will be subject to my usual objection?

The COURT.—Yes.

Q. What did it contain?

A. 55 per cent alcohol.

Q. Do you know what this is? A. Whiskey.

Q. Is it fit to use for beverage purposes?

A. Yes.

Q. I hand you a second bottle of the four testified to by Mr. De Spain as having been found in the office or the back room of Mr. Morrison in the Techau Tavern: Did you analyze that?

A. Yes.

Q. What is it? A. Wine.

Q. What does it contain in alcoholic volume?

A. 16.35 per cent.

Q. And is it fit to use for beverage purposes?

A. Yes.

Q. I now hand you a third bottle, testified to by the witness De Spain, as having been received at the same place. Did you analyze that chemically?

A. Yes.

Q. What does it contain?

A. Wine, 16.05 per cent alcohol.

Q. And fit to use for beverage purposes?

A. Yes, sir.

(Testimony of R. F. Love.)

Q. I now hand you the fourth bottle, which is the last of the four testified to by Mr. De Spain as having been found at the same place: Did you analyze that? A. Yes, sir.

Q. What does it contain?

A. It contains wine, 19.40 per cent alcohol. [56]

Q. Fit for use for beverage purposes?

A. Yes, sir.

Q. Are these bottles, as they have been handed to you, in the same condition they were when received by you from Mr. Rinckel and Mr. De Spain?

A. Yes, excepting what I took out for analysis.

Q. And did you afterwards seal them up?

A. Yes, sir.

Q. Is the seal that is on them now the seal that you placed on them? A. Yes, sir.

Q. Intact? A. Yes, sir.

Mr. GEIS.—We offer them in evidence, your Honor.

(The bottles were here marked U. S. Exhibit 3.)

Q. I now hand you a bottle that was testified to by Mr. Kupser as having been received in the Techau Tavern on the evening of the 30th of July, 1921, in this City and County, and ask if you analyzed that one? A. I did.

Q. What is the analysis in alcoholic volume?

A. It is whiskey and contains 31 per cent alcohol.

Q. And fit for use for beverage purposes?

A. Yes, sir.

Q. I hand you now a second bottle testified to

(Testimony of R. F. Love.)

by Mr. Kupser as having been received at the same time and place.

A. That also contains whiskey, 30 per cent alcohol.

Q. And fit for use for beverage purposes?

A. Yes, sir.

Q. I hand you a third bottle having been testified to by Mr. Kupser as having been received at the same time and place and under the same circumstances.

A. Yes, that contains 2.80 per cent alcohol.

Q. What is it?

A. I would call it a cocktail, a mixed drink.

Q. Fit for use for beverage purposes?

A. Yes, sir.

Q. I hand you now another bottle, having been testified to by [57] Mr. Kupser as having been received at the same time and place, and under the same circumstances: Did you analyze that?

A. Yes.

Q. What does it contain?

A. It contains wine.

Q. What is the alcoholic volume?

A. 11.05 per cent.

Q. Fit for use for beverage purposes? A. Yes.

Q. I hand you now the fifth bottle as testified to by Mr. Kupser as having been received at the same time and place and under the same circumstances, and ask if you analyzed that? A. I did.

Q. What is it?

A. It is whiskey, 26½ per cent alcohol.

(Testimony of R. F. Love.)

Q. And fit for use for beverage purposes?

A. Yes, sir.

Q. And the sixth and last bottle testified to by Mr. Kupser, as having been received at the same time and found under the same conditions and circumstances: Did you analyze that? A. Yes.

Q. What is it, and what is the alcoholic volume?

A. It contains 13 per cent of alcohol by volume; it is gin mixed with water.

The COURT.—Q. What is the proof of liquor as compared with the alcoholic volume?

A. The proof is just twice the percentage of alcohol by volume.

Q. 25%, as you have given it, would be 50 proof?

A. Yes, sir.

Mr. GEIS.—Q. The bottle of whiskey that you testified to as containing 30% alcohol, that would be sixty proof? A. Sixty proof.

Q. And so on down the line with the others?

A. Yes.

Mr. GEIS.—We offer those in evidence, your Honor, all as one exhibit.

(The bottles were here marked "U. S. Exhibit 4.")

Q. I now hand you "Government Exhibit No. 1," and ask you—

Mr. SCHLESINGER.—I suppose that what you want to show is [58] that it contains more than one-half of one per cent alcohol by volume?

The COURT.—Well, let us have the percentages now as long as the witness is on the stand.

(Testimony of R. F. Love.)

Mr. GEIS.—Q. What does that one contain, Mr. Love? A. The first one contains 11.65%.

Q. And that would be what proof?

A. 23.3 proof.

Q. The bottle you are now testifying to is the bottle marked Government Exhibit No. 1 as having been taken from the table where Mr. Rinckel and Miss Simpson sat?

Mr. SCHLESINGER.—What is the use of wasting time on that?

Mr. GEIS.—What does the other one show?

A. This contains 37 per cent of alcohol by volume.

Q. That would be 75 proof? A. Yes.

Q. And both of those last bottles are fit for use for beverage purposes? A. Yes, sir.

Mr. GEIS.—I offer these in evidence. They have been marked for identification.

(The bottles heretofore marked Exhibit 2 for Identification is now marked Exhibit 2 in evidence.)

The COURT.—Now, you might as well ascertain the alcoholic content of those other two bottles you have on the table there.

Mr. GEIS.—Which two, your Honor?

The COURT.—The two you have on your table.

Mr. GEIS.—I hand you a bottle, and ask you if that is one of the bottles that was brought by Mr. Kupser, Rinckel and De Spain? A. Yes.

Q. What is it?

A. This contains 9% of alcohol by volume; it is a mixed drink.

Q. And fit for use for beverage purposes?

(Testimony of R. F. Love.)

A. Yes, sir. [59]

Q. I also hand you another bottle.

A. It is the same as that, except that it contains 7% alcohol.

Q. And fit for use for beverage purposes?

A. Yes.

Mr. GEIS.—We offer these two bottles in evidence as one exhibit.

(The bottles were here marked "U. S. Exhibit 5.") (Tr. pp. 53-58.)

On cross-examination the witness testified as follows:

Q. That is rather a poor grade of whiskey that is contained in those bottles, isn't it?

A. Diluted. (Tr. p. 58.)

Testimony of Miss Daisy Simpson, for the Government.

Miss DAISY SIMPSON, a witness on behalf of the United States, previously sworn, testified as follows:

My name is Daisy Simpson. I am and was first appointed prohibition agent about a year ago.

Q. There was a period of time, was there, when you were no longer a prohibition agent?

A. Yes, sir.

Q. And you were subsequently appointed?

A. Yes, sir.

WITNESS.—(Continuing.) On the evening of July 29th, 1921, I was at the Techau Tavern, 247 Powell Street in this City and County. I was with

(Testimony of Miss Daisy Simpson.)

Mr. A. S. Rinckel, generally known as "Gurney" Rinckel. I went into Techau Tavern about 11:00 P. M. We went in there to make an investigation regarding reported violations of the National Prohibition Act, and we were authorized to make this investigation by Mr. John Exnicios, at that time supervising federal prohibition agent. We were seated at a table, on the east side of the dining-room, a two chair table and a waiter came to take our order, and we ordered two loganberry highballs, which were soft drinks. And Mr. Morrison was passing by the table, Mr. Rinckel stood up and said to Mr. Morrison, he said, "How do you do? [60] I guess you don't remember me, Mr. Morrison." And Mr. Morrison said, "Well, your face does look familiar." Mr. Rinckel said he used to come in at the old place, he said it was the first time that he had been in here and asked where Rudolph was, the head waiter at the old place, and he said that Rudolph was at the beach. He left the table and Mr. Lardi was passing, and Mr. Rinckel beckoned to him and said to Mr. Lardi, "We want to get a couple of drinks, something with a kick in it, we know Mr. Morrison." Mr. Lardi asked him what his name was. He said Mr. Belmont. He said, "Mr. Morrison O. K.'s all the orders for liquor and I will have to ask him." He went to Mr. Morrison who was standing about six feet from our table and he said something to Mr. Morrison which I could not hear, and Mr. Morrison looked over at our table, and Mr. Lardi came back in a second or so

(Testimony of Miss Daisy Simpson.)

and said, "It is all right, what do you want?" We said, "Well, oh, anything with a kick." He left and returned to the table with two gin cocktails. We drank the two gin cocktails, and after we drank them we asked him if we could get two whiskey highballs. He said, "Yes, we could," and we gave an order for it and he left and returned with them. Later on we ordered two more gin or whiskey highballs, which were served by Mr. Lardi. We asked him for the check and the waiter brought the *check* was \$9.27. After Mr. Rinckel had paid for the check, Mr. Lardi came to our table and said, "We usually have a nice crowd here on a Saturday night, and if we wanted to come back I will reserve a table at about seven o'clock." And I said, "How do you spell your name?"—no, I asked him what his name was, and he said "Lardi." I said, "How do you spell it?" "Lardi," and he wrote it down on a piece of paper, and he showed me the paper and spelled it out, "Lardi." We left. [61]

Q. Now, you were served, then, according to your statement, with a gin what do you call them?

A. Gin cocktails.

Q. And two whiskey highballs?

A. No, we were served with four whiskey highballs that evening. (Answer read.)

Q. Do you mean four each?

A. No, sir, we were served with two each.

Q. Two each. So that, during that evening, you yourself drank one gin cocktail and two whiskey highballs?

(Testimony of Miss Daisy Simpson.)

A. Yes, sir, and Mr. Rinckel the same.

Q. And Mr. Rinckel the same? A. Yes, sir.

Q. Now, those drinks were fit for use for beverage purposes, were they?

A. Well, we drank them.

Q. And you did drink them? A. Yes, sir.

Q. Now, what day of the week was that?

A. That was Friday, July 29th.

Q. Had you finished—read the answer.

A. That was Friday, July 29th.

Q. 1921? A. Yes, sir.

Q. Did you return on Saturday evening, the next evening?

A. Yes, sir, on Saturday evening, July 30th, about 8:00 P. M.

WITNESS.—(Continuing.) I entered that evening on the Saturday about 8:00 P. M. with Mr. Rinckel, the same Mr. Rinckel that I came with the night previous. We entered the place and Mr. Lardi met us this night and seated us at a table at the south end of the dining-room, a four-chair table, and against the east side wall. After Mr. Lardi seated us he said, "I will bring you a couple of smiles," and he left and returned with two gin cocktails. We ordered dinner from Mr. Lardi, and after we had given our order for dinner, Mr. Rinckel asked Mr. Lardi if we could get two whiskey highballs. Mr. Lardi said, "I will serve you two whiskey highballs, [62] but these will be the only two that I can serve you to-night, but I will make them double strength as we are

(Testimony of Miss Daisy Simpson.)

running short of liquor, and we won't have enough to go around to the rest of the guests." The whiskey highballs were served, dinner was served. After dinner—the dinner was served by the waiter, the whiskey highballs were served by Mr. Lardi. After dinner Mr. Lardi came to our table, and I asked him if we could get two coffee royals, and he told the waiter to bring us in two coffee royals, but before the—well, after he said that, he told Mr. Rinckel, he said, "If you want an after-dinner drink you can have anisette, apricot brandy or any other after-dinner drink that you want—" but before the coffee royals were served, the Federal agents raided the place and Agent Crawford, a Federal agent, seized the two whiskey highballs from our table. After the liquor had been seized from the table, Mr. Lardi came to the table and he said, "Did they get much liquor from your table?" And I said, "No, not very much." Well, he said, "We should have stopped serving sooner." A few minutes after that a man came to the table, that was the captain of waiters, a blond man and he said, "Listen here; if any more of these prohibition agents come around, you say you brought it in with you." Well, the waiter came with our check which was \$15.52 which Mr. Rinckel paid, and as we were leaving Mr. Lardi came up, shook hands with us, and said, "Come back any time, everything will be as usual." We left.

Q. And then you left the place?

A. Mr. Rinckel and myself left the place. (Tr. pp. 64-69.)

(Testimony of Miss Daisy Simpson.)

On cross-examination the witness testified as follows:

I was last appointed September 6, 1921. It was after the raid when I received my reappointment. I am a Federal agent [63] and I am under a salary of \$1600 a year and \$240 a year bonus, \$4 a day subsistence when I am out of town.

Q. Did you officiate in any other raids between July 31st and the date on which you secured this appointment?

A. July 31st and that day—well, I really couldn't say, I know before that I made several investigations before I was appointed, I know before the Techau affair, but I don't know whether after that or not.

Q. You made several investigations without holding any official position at all, is that right?

A. Well, I was authorized to make these investigations by Mr. John Exnicios.

Q. What is the fact, between July 31st and September 31st, did you act in any raid or raids?

A. Well, I will tell you: I think it was about July 21st that I took a temporary investigation for the Pacific Gas & Electric Company.

Q. I have not asked you about that, I have asked you whether, between July 31st and September 1st, you acted in any other raid or raids for the Government? A. July 31st to September?

Q. Yes?

A. Well, I couldn't say unless I would refer to my notes.

(Testimony of Miss Daisy Simpson.)

Q. You couldn't say? A. No.

Q. How long had you known Mr. Rinckel, the one who accompanied you to Techau's as you have stated? A. How long?

Q. Yes, how long had you know him?

A. How long have I known Mr. Rinckel?

Q. Yes?

A. Well, not very long, I met him just a few days before we were to make these investigations.

Q. You met him a few days before?

A. Yes, sir.

Q. You mean you met him a few days before you went with him [64] to Techau's restaurant?

A. Yes, it might have been a few days or a few weeks, I know I met him the day I was to go out with him on investigations.

Q. Under what name were you known as on that case? A. On the day of the raid?

Q. Yes?

A. Oh, I don't know, I didn't give any name at the raid or at the time of the investigation.

Q. Were not you introduced to some captain or waiter there as Mr. Belmont?

A. No, they asked Mr. Rinckel his name and he said "Belmont."

Q. You had been at Techau's on previous occasions, had you not? A. Yes, sir.

Q. You had tried to get liquor there, had *not* not? A. Yes, sir. Well, the captain of waiters told me that, unless I knew Mr. Morrison—he asked me if I knew Mr. Morrison. I said, "No," he said,

(Testimony of Miss Daisy Simpson.)

“Do you know any of his friends?” And I said, “No.” “Well,” he said, “You cannot get any liquor unless Mr. Morrison O. K.’s it.”

Q. Please answer my question, you had applied there before for liquor, isn’t that the fact?

A. Yes, sir.

Q. You had not succeeded in getting it, had you?

A. No, sir, we had on one occasion.

Q. You have answered the question.

A. Well, not on that occasion that we brought the wine in, but before that occasion we had gotten liquor there.

Q. You brought wine in? A. No, I did not.

Q. Didn’t you bring wine to that place about four months before this so-called raid—you yourself? A. No, sir, I did not, an agent did.

Q. What agent brought it in?

A. At that time a Federal agent, [65] Estelle.

Q. You were with him? A. Yes, sir.

Q. Where did you bring it from?

A. I did not bring it, we were in there, and he went out for it.

Q. Where did the agent bring it from?

A. I don’t know. (Tr. pp. 69–71.)

On redirect examination the witness testified, as follows:

Mr. GEIS.—Q. Miss Simpson, you spoke about having received liquor in the Techau Tavern on cross-examination, prior to the 29th day of July. Did you receive liquor there prior to that?

A. Well, liquor was served to other people and

(Testimony of Miss Daisy Simpson.)

myself, I was in a party of seven and the liquor was served, I was trying to think of the captain's name, I think his name is Kye.

Q. And about how long ago was that?

A. Well, I think it was about a year ago last July.

Q. Well, was it since the National Prohibition Act has gone into effect? A. Yes, sir.

Q. Did you hear any conversation between Mr. Lardi and Mr. Morrison?

Mr. SCHLESINGER.—Object to that, on the ground it is redirect examination and should have been brought out in chief.

The COURT.—She has already stated that she did not.

Mr. GEIS.—Q. Did you observe their action at that time? A. Yes, sir, I did.

Q. What was it?

The COURT.—She stated that.

Mr. SCHLESINGER.—I object to that.

The COURT.—She said Lardi went over there and spoke to Morrison and Morrison looked over at the table, and Lardi came back. [66]

Mr. SCHLESINGER.—That is what she said.

Mr. GEIS.—That is all. (Tr. pp. 71 and 72.)

On recross-examination the witness testified as follows:

Mr. SCHLESINGER.—Q. When was it that this agent, accompanied by you, brought wine into Techau's Tavern, what month?

(Testimony of Miss Daisy Simpson.)

A. It was in August.

Q. In August? A. Yes, sir.

Q. August of what year? A. 1920.

Q. Was that the only occasion that you and the agent drank wine in there which had been brought in by yourself, the only occasion?

A. It was the only occasion that I had been in there with agent Estelle and that he brought the wine in.

Q. Were you in the service of the Government at that time?

A. No, I had been recommended, my appointment had not come through, my appointment did not come through until, I believe, around the first of September.

Q. You were appointed later, were you not, after you had brought the wine in?

A. Well, I did not bring the wine in, the wine was brought in for a purpose, Mr. Schlesinger. We felt that, if the wine was brought in, and we got out of it, then we would have an opportunity to order more, that was the reason the wine was brought in.

Q. You were a member, sometime ago, of what was known as the Moral Squad here, doing work for Draper Hand?

A. No, sir, I worked for the State Law Enforcement League, we co-operated with the Moral Squad and with the Government.

Q. You co-operated with Draper Hand?

(Testimony of Miss Daisy Simpson.)

A. Well, co-operated with Draper Hand and other officers.

Q. You worked with him, did you not?

A. Yes, sir. (Tr. pp. 72 and 73.) [67]

On second redirect examination the witness testified as follows:

Why, at that time I was working with the State Law Enforcement League and it was on war-time prohibition and Redlight abatement, and we co-operated with the Government and with the Moral Squad at that time in charge of Captain Goff. In my former employment I was a temporary employee. I received a temporary employment as federal agent. Now, I was reappointed and I received a permanent appointment as federal agent. I mean to say that I first had temporary employment and now I have been given a permanent employment. (Tr. p. 75.)

Testimony of C. H. Wheeler, for the Government.

C. H. WHEELER, a witness called on behalf of the United States being first duly sworn, testified as follows:

I am a Federal agent and have been working for the Government all told about sixteen years. I was appointed gauger, my first assignment was gauger in the Internal Revenue Service, being deputy clerk in charge of the territory around San Jose. I held that position for about nine years. Then in the office in San Francisco, this department

(Testimony of C. H. Wheeler.)

when it was organized in 1920. I was present with other agents on the evening of July 30, 1921, when a raid was made on the Techau Tavern, 247 Powell Street.

Q. During that evening, I will ask you if you secured any liquor from the various tables, or any tables in the main dining-room? A. Yes, sir.

WITNESS.—(Continuing.) I turned it over to Agent Wolfe. He was in charge and he put it in a bottle. I think Mr. Wolf labeled that one, I put my name on the ones that were found behind the bar. I was with Mr. Kupser behind the bar, and I was present when there was some dumping being done by a couple of waiters. [68] In the main dining-room I secured liquor from two tables. They were right following as I went in, I went down between the rows of the tables or down the side between the dance floor and the tables, and pretty well down toward the back of the room, as I entered, I found glasses or cups on two tables, glasses on one and cups on the other. I took them off and turned them over to Agent Wolfe, and then I went into a kind of a pantry, serving-room, a barroom, whatever you would call it. (Tr. pp. 74, 75.)

Testimony of J. P. Doyle, for the Government.

J. P. DOYLE, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I am a Federal prohibition agent and have been such since the enforcement law was passed. I

(Testimony of J. P. Doyle.)

was present on the evening of July 31st or July 30th, 1921, when a raid was made on the Techau Tavern at 247 Powell Street, this city.

Q. I will ask you if on that evening you secured any liquor from the various tables in the main dining-room?

Mr. SCHLESINGER.—(Interrupting.) Is this corroborative testimony of Wolfe?

Mr. GEIS.—No, these are different tables.

A. I took two, I think it was two, I think it was two gin cocktails off of different tables, I took to the left side from the main entrance. I went in and I took two from different tables there. I brought them over to Mr. Wolfe, he was almost at the entrance, at a table to the right of the entrance there and I gave it to him and it was poured in a bottle. (Tr. pp. 75, 76.)

**Testimony of A. S. Rinckel, for the Government
(Recalled).**

A. S. RINCKEL, recalled for the United States, being previously sworn, testified as follows:

Mr. GEIS.—Q. Mr. Rinckel, on the evening of July 30th, 1921, you had something to eat in that place, did you not? [69]

A. We did, sir.

Q. Just tell the Court and jury what you ordered and what you received to eat?

A. We had a squab chicken, artichoke salad, green peas and some new potatoes, no dessert. (Tr. p. 77.) [70]

(Testimony of A. S. Rinckel.)

On cross-examination the witness testified as follows:

These things were all itemized on the checks. The apartment house for which I was a helping manager was conducted by my mother at the time.

Mr. GEIS.—That is the Government's case, your Honor. (Tr. pp. 77 and 78.)

Testimony of C. H. Wall, for Defendants.

C. H. WALL, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I have been a resident of California all my life, forty years. My father and I were interested in the firm of Hobbs, Wall & Company. I lived for a number of years in Crescent City, Del Norte County. I am President and director of the Techau Tavern Company. It is a corporation and it owns a leasehold of the premises known as 247 Powell Street. Techau Tavern has been in existence in San Francisco as near as I can remember about twenty years. It is a cafe, a high-class cafe. Mr. Morrison is the manager. We have always endeavored to cater to the nicest people, a family trade, and that has been the policy of the tavern ever since it has been under the management of Mr. Morrison, also prior to that, as I understand. The company has never been cited to appear before the Police Department to correct anything in the management of the place.

Q. Has your company ever before been charged

(Testimony of C. H. Wall.)

with a violation of any liquor law?

A. Not to my knowledge.

Q. What is the patronage at that place, in a general way as to women and children patronizing it?

A. Why, the principal patrons of the tavern are women, that is to say, it is a family cafe.

Q. A family cafe? A. Yes, sir. [71]

Q. Mr. Wall, to your knowledge, or with your consent, have any liquors been sold in that cafe during the time of your presidency, or rather, since the prohibition act went into effect, have any liquors been sold there?

A. Well, liquor has been sold there, but not with the knowledge of Mr. Morrison or the directors.

Q. Won't you please explain that in your own way, when you say liquors have been sold there?

A. Well, shortly after prohibition went into effect, we held many consultations regarding the conduct of the tavern from that time on, and it was known, or captains had been known—well, I might say, that, at the time of the war, when there was no sale of liquors permitted to soldiers, men have been dismissed by Mr. Morrison for selling their own liquor to soldiers in there, and there was a great deal of trouble about it at that time, that is not through the authorities but with Mr. Morrison and the help. There were signs printed downstairs at that time. Then, later on, we feared that the same trouble might occur again, and Mr. Morrison wanted to guard against that very carefully,

(Testimony of C. H. Wall.)

so he posted signs downstairs about the bringing in of liquor into the house by employees, words to the effect that they would be dismissed immediately, and on several occasions after that, to my knowledge, they had disposed of liquor in there and were discharged for that very reason.

Q. Has your company sold, kept or maintained liquors there for the purposes of sale?

A. Not to my knowledge.

Q. Now, coming down to the particular two nights in question embraced within this complaint, did you, upon that night, keep or maintain at that place, 247 Powell Street, any liquors for sale to the guests? A. No, sir.

Q. Did you authorize any waiter or waiters in your service to serve liquors to any of the guests?

A. Quite the contrary, [72] they were told, and they were brought before Mr. Morrison for the purpose of listening to just the exact rules about that, and what would happen to them in the event of that sort of thing occurring.

Q. Do you recall how many persons, approximately, are in the service of your corporation at that place? A. I think about 158.

Q. 158? A. Yes, sir.

Q. Do these employees maintain lockers in the establishment? A. They do.

Q. In what part of the building are those lockers maintained?

A. They are in the basement of the building.

Q. I will show you what purports to be a

(Testimony of C. H. Wall.)

diagram of that basement, and ask whether or not this correctly delineates that basement as it existed upon the occasion in question?

A. Yes, this is the plan of the Tavern basement.

Mr. SCHLESINGER.—We will offer this in evidence.

Mr. GEIS.—No objection as long as it is correct.

Mr. SCHLESINGER.—Q. Is this the correct description of the office part of the basement? Look at that carefully, Mr. Wall, and particularly as to showing the location?

A. Yes, sir.

Q. Of an office adjoining that occupied by Mr. Morrison? A. Yes, sir.

Mr. SCHLESINGER.—We will offer this in evidence, Mr. Geis.

Mr. GEIS.—Mr. Schlesinger, would you have any objection to putting it on the blackboard?

Mr. SCHLESINGER.—I have no objection to its being put on there, it is very small and should be larger.

Q. Before that is done, Mr. Wall, I will ask you to please describe that portion of the diagram marked "outer office" and that portion of the diagram [73] marked "telephone operator"?

A. Well, there is a stairway.

Q. And that part marked "private office of Mr. Morrison"?

A. There is little stairway leading down from 325 Geary Street, and you turn to the right as you

(Testimony of C. H. Wall.)

come in, you come into the office of the stenographer and bookkeepers, and there is a door there leading into the office occupied by Mr. Morrison.

Q. Well, now, is there a door leading into what is marked here as the "outer office"? A. Yes, sir.

Q. And called by one of the witnesses a storeroom? A. No.

Q. Is that a storeroom, that marked "outer office," is it a storeroom? A. Why, no.

Q. What is it used for?

A. Why, it is used for the clerical work, the clerical workers, I should say, there is stationery and books of account and checks and so forth, that is check stubs and all that sort of thing, in connection with the business of the Tavern, but nothing to do with the storeroom, that is a long way from it.

Q. Did Mr. Morrison ever occupy that office?

A. No.

Q. Now, please state who did occupy that office?

A. Why, the stenographer and I think the two or three bookkeepers employed there.

Q. There is no question about it?

A. Not a bit in the world.

Q. Never have been to your knowledge?

A. Never.

Q. Now, will you please state how access to that office is gained, to the outer office, how do you get into the outer office?

A. Why, you have to ask the young lady for permission to enter.

(Testimony of C. H. Wall.)

Q. Well, what are the entrances, where do they lead from?

A. They lead, one leads into the kitchen, one leads into the stairway going up to the tradesmen entrance on Geary street. [74]

Q. Has that outer office any direct connection with Mr. Morrison's office?

A. So that you pass through it to go into Mr. Morrison's office.

Q. You pass through it to go in there?

A. Yes, sir.

Q. And, in other words, one going into the outer office cannot pass through Mr. Morrison's office to get access to it? A. Cannot.

Q. Now, where is the entrance to the outer office, where is it located? There is the outer office there, Mr. Wall?

A. Where is the stairway here, I don't see it, going up to Geary street.

Q. That is not shown there, but there is a stairway there.

A. There is a stairway that comes right down, you turn to the left and that is the kitchen, and the chef's desk is right to the left there, a little small office, and you go into the main kitchen. As you turn to the right there is a door there, and that is the office help, that is the bookkeepers and clerical department, the stenographer, you open that swinging door and there is another door which leads into Mr. Morrison's office.

Q. And Mr. Morrison's office is separate and

(Testimony of C. H. Wall.)

apart, is it not, from the outer office?

A. Yes, sir.

Q. Now, is there any stationery or any stationery supplies kept in that outer office?

A. In the outer office?

Q. Yes.

A. I think there is stationery supplies kept in both offices, as near as I remember, there are little lockers there with stationery in it, little drawers.

Mr. SCHLESINGER.—Now, we will offer this in evidence.

Mr. GEIS.—That is all right as long as it is reasonably correct. Defendant's Exhibit "A."

A. I should say also that there are many souvenirs given away, and there are also souvenirs [75] kept in there and things of that sort.

Mr. SCHLESINGER.—Q. A witness testified, Mr. Wall, that they found a couple of bottles of claret, perhaps three bottles, hid in what is designated there as the "outer office," he called it the storeroom. Has that ever been used as a storeroom to your knowledge? A. Never, at any time.

Q. Have you such a place as a storeroom there?

A. We have.

Q. What is kept in that storeroom?

A. Why, in the storeroom, I think, are kept non-perishables. I don't know just exactly, but such as coffee and spices and canned goods and all sorts of things.

Q. Is it called the supply-room?

A. That is called the supply-room.

(Testimony of C. H. Wall.)

Q. And from that requisitions are made for articles of food for the guests, is that right?

A. That is correct.

Q. Mr. Wall, have you ever had any difficulty in guests bringing liquors to that establishment?

A. Yes, sir.

Q. And upon occasions of that character what have you done in the way of stopping it?

A. Why, we have discussed that quite thoroughly at meetings.

Q. Who do you mean by "we"?

A. I mean the directors of the Tavern, including Mr. Morrison, the manager, to find a way to guard against that sort of thing. It is a hard thing to do, you cannot, where you feed and take care of probably 1500 people a day, you cannot tell exactly what they bring in or come in with, you cannot go to them and order them out because you think they have got something covered up, and there have been times that I know of that people have come in there and put bottles on the table and been told that they would have to take them out or leave.

Q. Did you ever give any instructions to waiters or captains as [76] to what they should do in the event of guests bringing liquor to the tables?

A. Mr. Morrison has given them their instructions, to my knowledge told them that they would have to take it out, get rid of it.

Q. Have you endeavored to enforce that rule in every conceivable way, Mr. Wall?

A. Yes, sir, in every way.

(Testimony of C. H. Wall.)

Q. Now, Mr. Wall, we have here in evidence liquor, wine, some found on the tables and some found in some places, it is claimed secreted behind stationery. I will ask you whether the Techau Tavern Company owns these liquors, to your knowledge? A. They do not, to my knowledge.

Q. To your knowledge, were they ever there for the purpose of sale or otherwise, to your knowledge?

A. No, sir.

Q. Did you ever authorize them to be served?

A. I did not, I might add, if I may, that it was not very long ago that a man was dismissed—I cannot just recall his name, but he was a bottle washer there, I think, or worked in that department, he was making wine that he made out at his home, I think, and in turn, brought it down there, according to the old rule, why, the help were permitted to drink so much beer, that is, the cooks behind the ranges,—I think there are 24 employed—their work is very hot, and they were permitted to drink beer, that was their union rules that they were granted so much of that a day to drink. When this law went into effect, of course that ended that, and whether or not they did not want the near beer or whatever it was, I don't know, but this man, later on, brought this wine down and on several occasions a lot of jugs of this red wine were found there, and nobody seemed to know where it came from, until, through some slip, this fellow let out that he was making and bringing it there. Whether he was selling it or not, I don't know. We cleaned [77] that out and

(Testimony of C. H. Wall.)

got rid of him. There has been many, many instances just like that where the help—the tips have been great, and it has been a great incentive to serve their own stuff in there when it was worth while.

Q. Under your employ you have a great many foreign-born?

A. Yes, they are mostly foreign-born.

Q. Greeks and Italians and French?

A. Greeks and Italians and all nationalities, yes, sir.

Q. If they have brought wine in there and concealed it, any of them, or sold it, as you have said, it is entirely without knowledge or sanction, indeed?

A. Yes.

Q. You have a large investment there, have you not, Mr. Wall? A. Yes, sir, we have.

Q. Without going into detail, in a word, representing more than \$100,000? A. Yes, sir.

Q. A great deal more? A. Yes, sir.

Mr. SCHLESINGER—I think you may cross-examine.

The COURT.—Q. What connection has Mr. Lardi with the establishment, Mr. Wall?

A. I presume he is either a waiter or a captain, I don't know, I don't know the names of all of the help, your Honor. (Tr. pp. 78–86.)

On cross-examination the witness testified as follows:

The restaurant opens about noon in the morning, that is about quarter to twelve, I think. The guests

(Testimony of C. H. Wall.)

are permitted to enter about quarter to twelve, between quarter to twelve and twelve. We serve no breakfast there at all. We run until one o'clock, I am not quite positive, I think according to law, the music must stop at one, and after that they do not usually remain [78] very long. I am sometimes there in the evening for my dinner. Not every evening. I should say four or five evenings a week. I am quite positive I was there on the 29th and 30th of July of this year. I did not observe the raid. I was not there. I went there about seven o'clock, and I think I left about nine or nine-thirty. I was absent at that particular time.

Q. If, as a matter of fact, there were liquors sold there and delivered by Mr. Lardi, with the knowledge of Mr. Morrison, you are not upholding that sort of action, are you, as president of that institution?

A. Upholding what sort of action?

Q. If, as a matter of fact, Mr. Lardi served liquor, gin cocktails and whiskey highballs, and Mr. Morrison knew of the fact, are you as president, upholding that action?

A. I certainly am not, no, I am not.

Q. You would not think that was right, would you? A. I would not.

WITNESS.—(Continuing.) I naturally observe, being interested, I am always observing the actions of the help, and also the actions and conduct of the people, that is natural that I would, although, if I have any suggestions to make, I make them to Mr.

(Testimony of C. H. Wall.)

Morrison, I never take any active part. I would know Mr. Lardi if I saw him. I recognize him. He is one of the captain of waiters. I will say that liquor could be sold there by the help without my knowledge.

Q. Don't you think it could also be sold with Mr. Morrison's consent, without your knowledge?

A. I don't think so, no, sir.

Q. What would prevent him if you were not there?

A. Well, I don't think he is that type of man.

Q. I see, and that is the only basis you have?

A. That is the basis we all have. [79]

Q. Is there an office belonging to, or occupied by Mr. Morrison on the lower floor?

A. There is. As you come down on Geary street a little flight of stairs, you turn to the right.

Q. Geary street is the street on the north of Techau Tavern?

A. Yes, sir, that is the tradesmen entrance, and you turn to the right, as you come down, there is a sort of a little steps of probably six feet by about eight, the one to the left says, "Kitchen," to the right says, "Office," or, I would not swear that it says "Office" on the outside door, possibly it does, and there is a little mail-box there, and as the trades people come in they see the sign, either left or right, the help go to the left, the trades people turn to the right, as I say, into this office door. In there is, I think, two bookkeepers and a stenographer and telephone operator, and there is some

(Testimony of C. H. Wall.)

lockers there with stationery and a lot of little pigeon-holed affairs for checks and all sorts of things, kept in there, all the stationery, and you enter that office if you come to transact business. And then Mr. Morrison's office is to the right of that. In there is Mr. Hatton, the cashier. I think he is the only man in there, and the safe is in there, Mr. Morrison's desk is in there and there are Mr. Hatton's books and records kept in there. There are some lockers and pigeon-holes there. There is a little sort of an alcove, and in that is kept souvenirs of all sorts, and stationery of all kinds, there are a great many pads of stationery used in business, and that is the purpose of the office.

Q. Now, in this Mr. Morrison's office is there a little place off from it where some stationery is kept that you have to go into that place from Mr. Morrison's downstairs office?

A. There may be a sort of—I think there is a little—there is a door in there, I don't know how large it is, probably four [80] or six by eight, and in that is souvenirs and, as I say, more stationery and all that sort of thing. There is no egress or no ingress, as a matter of fact, except through Mr. Morrison's office downstairs into that little place. You have to go through Mr. Morrison's [81] office to get in there, and in order to get out you have to come out the way you went in. Our company certainly does not authorize Mr. Morrison to keep liquors there, and if we knew it we would object to it.

(Testimony of C. H. Wall.)

The kitchen is located to the left as you come down this stairway and the kitchen is in there.

Q. Can you go from the kitchen around to Mr. Morrison's office, the one you have just described?

A. Can you go around to it?

Q. I mean on that floor?

A. Well, there is a glass front all around there so that the help can be observed from this little partitioned office.

Q. There was a door through there, one or two or more, so that you could go around in there on the same floor?

A. No, you have got to go through this door into Mr. Morrison's office, and you have got to go through this kitchen door if you come in from the kitchen, and if you come in from Geary street you come down through Geary street, and there are the two little doors there, one says "kitchen" and one says "office."

Q. When downstairs you can go to Mr. Morrison's office or you can go to the kitchen?

A. Why, certainly.

WITNESS.—(Continuing.) The food is cooked in the basement, and when the waiter delivers it to the guest he comes up the stairway. Before it is delivered to the guest it is checked. The man who checks it sits right at the entrance to the stairway. Whatever the guest has ordered and whatever may be the cost of it he checks it, then it is brought to the table. The waiter, as he comes up from the kitchen, writes on it with his pencil, and then it is

(Testimony of C. H. Wall.)

handed to the checking clerk and he stamps it on in typewriting. The check is then kept until the guest asks for it. It is kept by the waiter. If the guest makes a little additional order from what he had ordered first, it goes through practically [82] the same routine, and finally when the meal is finished and the guest calls for his check, it has been written on in pencil or otherwise by the waiter and stamped by the stamp clerk or check clerk and then it comes to the table of the guest with the amount all added up.

Q. Haven't you ever paid for anything there, don't you know how it is done?

A. You are taking me from the kitchen right to the guests, and you are trying to take me through every proceeding, I know that the checks are presented.

Q. I only want to know what you know.

A. I know in a way because of Mr. Morrison's explanation of that system, in order to protect guests and to protect, as near as you can, a waiter from doing just these things that I have referred to, selling his own stuff and keeping his own check and not giving you the check that you ordered with at all, that is done very often, you do not get the check that you think should have been given to you.

WITNESS.—(Continuing.) What I want to explain is, that very often a waiter will give you a check that is not your check at all, and you will pay it. We have tried to guard against that, Mr.

(Testimony of C. H. Wall.)

Morrison has, in order to protect the patrons of the place, they do not look, they simply take what is given them, they do not take their receipt very often. They are also given a receipt at the bottom of the check so there is no mistake about it, each guest is given his receipt, anyone that comes into that place and pays a check gets a receipt for his check, that I do know. That is the rule, all they have to do is to ask for it.

Q. Do you know, Mr. Wall, whether or not the food you serve, or the drinks you serve, or any of them, are subject to Government tax?

A. I believe so.

Q. That sometimes makes the bills come with odd cents, too, [83] doesn't it? A. Yes.

WITNESS.—(Continuing.) The service bar is located near the checker's, it is on the same floor as the cafe proper. The street floor. There is a balcony there, what you would call something like a mezzanine floor.

Q. How do you get to your mezzanine floor, now, we will call this the floor that is above the ground floor, which would be really three floors, the basement being one, the ground floor two and the mezzanine floor three? A. Yes, sir.

Q. How do you get to that floor?

A. Are you referring to the patrons or the help?

Q. Well, either one or both?

A. Why, there are three or four stairways, there is a stairway from the main lobby going up to private tables.

(Testimony of C. H. Wall.)

Q. See if I am substantially correct, Mr. Wall. I am assuming the map to be north—Geary street marked here, Geary street being north, this being Powell street (indicating). The main entrance is from Powell, is it not? A. Yes, sir.

Q. That is a large entrance? A. Yes, sir.

Q. What is the first room on the right-hand side as you come in from the street?

A. The first room?

Q. Before you get to the dining-room?

A. The check-room, the hat check-room.

Q. Now, following, let us assume that this diagram is correct, there is a door there, is there not, at the check-room?

A. No, there is not a door there.

Q. Well, an opening? A. Yes, an opening.

Q. Now, following that on this diagram, there is another opening, what is that, if there is one there?

A. Well, there is the gent's lavatory there. [84]

Q. Is there any way of getting upstairs through that door? A. No.

Q. Where is the ladies lavatory?

A. That place a little—probably twenty or thirty feet further on.

Q. On the same side? A. On the same side.

Q. Well, where is the stairway, if there is any stairway before you reach the main dining-room?

A. There are two stairways.

Q. Let us remain on that side, on the right-hand side as you come in, going west?

A. Well, the entrance to the ladies dressing-room

(Testimony of C. H. Wall.)

is just practically the same entrance as the main dining-room only there is a little curtain there. You turn to the right, there is a stairway going up from the ladies dressing-room.

Q. Up to the mezzanine floor? A. Yes, sir.

Q. Let us take the left-hand side, now?

A. Yes.

Q. Is there an opening there to the left before you reach the main dining-room?

A. Well, just a little before there are two doors going in, one is the dining-room and one is the balcony it is labeled "balcony."

Q. You can reach the mezzanine floor then on either side of the entrance? A. Yes.

WITNESS.—(Continuing.) On the mezzanine floor there are probably ten or twelve booths and a moving-picture projector and a small banquet-room and the dressing-rooms for the entertainers, and the office of the Wall Estate Company. There are no private rooms on the mezzanine floor to entertain guests. The rooms do not all open one into the other, but there is probably a six foot partition separating them, they are not closed, they are not private rooms they are called booths. There is a dance platform downstairs and we have entertainers there in the evening. They are not all [85] ladies, some are gentlemen. The rule is changed quite often, sometimes you have an entertainment of a ballet, then again you will change that to just singers. It is a high-class cabaret, always has been.

The music-stand is located right beside the en-

(Testimony of C. H. Wall.)

trance, right a little above the dance floor. When the waiters come up from downstairs they come up a stairway and here is our checking-man. They get their check and then come into the dining-room.

Q. And who is at the other end here, who sits over here?

A. Why, that is where the bar formerly was.

Q. That is really the service bar at that place, isn't it? A. Yes.

Q. Now, you made a statement, Mr. Wall, that seemed to be positive, that liquors have been sold there? A. Yes, sir.

Q. But, you also added to that, but not with Mr. Morrison's consent?

A. I said, not with the consent of the directors or Mr. Morrison, I might say, the management.

Q. You base that last assertion, however, upon the things which Mr. Morrison would tell you, I believe you stated a while ago, that liquor could be sold by Mr. Morrison without your knowing it?

A. No, I didn't say that.

Q. Well, couldn't it?

A. Yes, sir, and you asked me why I thought he could not do it, and I said because of the faith I had in him.

The WITNESS.—I would like to add: You were referring to Mr. Morrison, why I put the faith in him, that the Tavern company is owned by the widows—the principal stockholders are widows of the original incorporators who have passed and gone, and their daughters, Mr. Morrison's wife and

(Testimony of C. H. Wall.)

his family and the family of [86] Donald MacDonald and the family of Henry Owens and also the Wall family, and it is owing to that fact that it has been Mr. Morrison's policy, and also the policy of the rest of the directors to keep that place clean in all respects, and run it as a high class place, and that is the conduct—

Mr. GEIS.—(Interrupting.) Well, I have not the slightest doubt, Mr. Wall, but what that is your idea about it, I am not attempting to connect you personally with any sale of liquor, you understand that? A. I understand.

Q. And so far as you personally know, you know of no sale that was made there on the 29th or the 30th of July of this year?

A. I do not. (Tr. pp. 86-99.)

Testimony of Albert C. Morrison, for Defendants.

ALBERT C. MORRISON, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

I have lived in San Francisco approximately 25 or 30 years. I am a man of family. I am connected with the Techau Tavern Company as manager, and have been such approximately 18 years.

Q. Mr. Morrison, you are charged in this information, sworn to by Mr. Rinckel, signed by the United States attorney, with having, on the 30th day of July, 1921, maintained a common nuisance at the premises known as the Techau Tavern, in that you had kept on those premises certain intoxicating

(Testimony of Albert C. Morrison.)

liquors. I will ask you whether or not you did, on that day, or at any time, keep in that establishment any intoxicating liquors? A. No, I did not.

Q. I will ask you whether or not you had any knowledge of these liquors which have been put into various bottles, having been kept there, or, if they were there, did you know they were there at that time, or, at any other time, until after the raid?

A. No, I did not.

Q. Did you ever authorize Mr. Morrison, the sale or the disposition [87] to guests of any intoxicating liquors, either on that date, or any other date, since this prohibition act was enacted?

A. No, sir, I did not.

Q. Have you ever authorized any waiters or employees to sell liquors to any of your guests?

A. No, sir, I did not, to the contrary I discharged some.

Q. How many employees did you have, I mean the Tavern company, on the dates in question, approximately?

A. Well, we had more than we generally had, I think it was the Knights of Columbus, or some convention was here, and we may have had approximately between 125 and 150 employees there.

Q. That was to take care of your guests?

A. Yes, sir.

Q. And were those employees scattered in the kitchen and in the main dining-room and throughout the entire establishment?

A. Yes, sir, they were all over the place.

(Testimony of Albert C. Morrison.)

Q. Do you recall, approximately, how many waiters you had at or about that time, without going into details?

A. Oh, I would say in the neighborhood of thirty or more, more or less.

Q. Were your waiters largely made up of the foreign-born elements?

A. The largest percentage are Europeans.

Q. Italians, French and Greeks? A. Yes, sir.

Q. Did you ever allow, since this act became a law, did you allow waiters to bring liquors into your establishment ever for their personal use?

A. No.

Q. What did you do, if anything, with respect to keeping liquor off the place, what warnings, if any, did you give?

A. They were told, time and again, in different ways, we have a sort of efficiency meeting with the waiters at stated periods, at which time the man who has charge of that department talks over different transactions that may have happened, or anything for the [88] benefit of the business, and that thing is frequently brought up, and then I have had signs posted throughout the place where the help congregated.

Q. Are those signs put in a conspicuous place on the premises? A. Yes, sir.

Q. Did you ever have any difficulty, Mr. Morrison, that is, prior to this time, immediately prior to this time, with waiters bringing stuff on to the premises?

A. Yes, sir.

(Testimony of Albert C. Morrison.)

Q. In those instances, what action, if any, did you take towards stopping the practice?

A. Dismissed them.

Q. Dismissed the waiters. Did you ever have any difficulty with guests bringing wines or liquors to the tables?

A. Yes, sir, we have even gone to the point of ejecting some, put them out of the place.

Q. You heard the testimony of a Miss Simpson, I believe that is her name, here upon the stand, having brought into that establishment, on one occasion, or having had an agent bring it in—

Mr. SCHLESINGER.—I will reframe it.

Q. You heard her testimony that an agent, in company with her, had brought in wine into the establishment. Was that brought in with your sanction or concurrence? A. No, sir, it was not.

Q. Did you invite her to bring it in?

A. No, sir.

Q. Have you any acquaintance with that woman?

A. No, sir.

Q. Do you know a man named Belmont, a man named Rinckel, rather, sometimes calling himself Belmont?

A. No, only since the court proceedings here.

Q. Mr. Rinckel testified that, on the occasion of his alleged first visit to that place, that he was introduced to you and that you had a few words with him, do you recall that occurrence?

The COURT.—No, he did not say that, he said

(Testimony of Albert C. Morrison.)

he presented [89] himself to him and said he knew him.

Mr. SCHLESINGER.—I thank your Honor for that.

Q. He claimed that he was presented to you.

The COURT.—No, that he presented himself.

Mr. SCHLESINGER.—Yes.

Q. To you. Now, did that occur, to your knowledge?

A. I have no recollection of it at all, no, sir.

Q. It may have occurred or may not have occurred, is that true? A. It is possible.

Q. How many guests were there upon that occasion, if you recall, approximately?

A. Oh, upwards of four hundred, I would say.

Q. Did you, on that occasion, shake hands with a great many guests some of whom you knew and some of whom you did not know, isn't that true?

A. Yes, sir, there was a convention here and a lot of people had cards and letters of introduction to me and made themselves known, but I would not remember who they all were.

Q. Mr. Morrison, these tables in Techau Tavern are covered, are they not, with table cloths?

A. Yes, sir.

Q. Which can, of course, be removed, linen table cloths? A. Yes, sir.

Q. And do they, or not, extend some distance along the sides of the tables? A. Yes, sir.

Q. It has not been your habit, has it, to peer under the tables to see what the guests have, has

(Testimony of Albert C. Morrison.)

that been your habit? A. No, sir.

Q. You assume that they are obeying the law, do you not? A. Yes, sir.

Q. I will ask you whether or not you are familiar with this diagram which portrays a portion of the basement?

A. Yes, sir, I brought it here. [90]

Q. You brought it here at my request, did you not? A. Yes, sir.

Q. Does that correctly delineate, Mr. Morrison, your private offices with respect to that portion of the place marked "outer office"?

A. Yes, sir, it is made from the architect's drawings with mathematical precision, I would say.

Q. Won't you please describe to this jury, as briefly as you can, the dimensions of your private office, the size of it? A. Approximate?

Q. The approximate size?

A. I would say about seven by ten.

Q. And what is in that office, how is it made up in the furniture?

A. It is faced, in front, with glass windows, and on that front is built in a permanent desk with closets underneath, then there is a safe and then there is my desk.

Q. And are there any other occupants of that particular office with you or do you occupy that alone?

A. No, Mr. Hatton occupies it with me.

Q. And who is Mr. Hatton, please?

A. He is the cashier, office manager, you may say.

Q. Does he keep his books there? A. Yes, sir.

(Testimony of Albert C. Morrison.)

Q. Accounts? A. Yes, sir.

Q. Now, will you please also describe to these gentlemen the office which has been called a store-room, which is marked here "outer office." What are the dimensions of that outer office and where is it situated with respect to your office?

A. Well, making a mental calculation of the distance, I would say it is about ten by twelve by fourteen.

Q. Ten by twelve? A. Yes, sir.

Q. Is that outer office which has been called here by the witness [91] a "storeroom" occupied by any of your help? A. Yes, sir.

Q. And was it so occupied on the occasions in question? A. Yes, sir.

Q. And will you please tell the jury what help—your help occupy that room, that office?

A. The accountant, and an assistant accountant and clerk and telephone operator and stenographer.

Q. Did you have a phone exchange there?

A. Yes, sir, the stenographer attends to the telephone exchange.

Q. Did you occupy that office? A. No.

Q. Now, what was kept there, if anything, in the way of supplies, if you know?

A. No liquors or food supplies of any kind, just what is necessary for the conduct of an office.

Q. Well, was stationery kept there?

A. Yes, sir.

Q. Any food supplies kept there? A. No, sir.

Q. Any liquor supplies, to your knowledge?

(Testimony of Albert C. Morrison.)

A. No, sir.

Q. Had there ever been any liquor kept there?

A. No, sir.

Q. To your knowledge? A. No, sir.

Q. Now, do you also have, in that establishment,
a supply room? A. Yes, sir.

Q. And where is that situated?

A. In the extreme rear of the kitchen.

Q. And what is kept there?

A. Groceries, meats, ham, bacon, everything that
is necessary for the conduct of a cafe.

Q. Do the men have lockers at that establishment,
the help? A. Yes, sir.

Q. Have you access to those lockers?

A. No, they each have their own locker and key,
he has his own locker and then he has his lock and
key.

Q. And where are those lockers maintained, on
what part of the [92] premises?

A. They are maintaintd in the basement of the
Powell Street portion of the premises.

Q. No, on the 30th day of July 1921, a number
of raiders—I have forgotten the exact number—
came into Techau Tavern? A. Yes, sir.

Q. Were you there on that occasion?

A. Yes, but not in the dining-room.

Q. Not in the dining-room? A. No, sir.

Q. Do you recall just where you were?

A. Yes, sir, I was at my desk downstairs, the
raid was pretty well over by the time I was told
of it.

(Testimony of Albert C. Morrison.)

Q. Did they search the premises and all of the premises, to your knowledge?

A. Oh, yes, they had it pretty well searched before I knew of it.

Q. Did they search the lockers of the men?

A. That is my understanding of it.

Q. Was your office searched? A. Yes, sir.

Q. I believe it is in evidence here that some small quantity of liquor was found upon two tables, one table occupied, I believe, by Mr. Rinckel, sometimes calling himself Belmont and Miss Simpson. Do you know how that liquor came to be on that table? A. No, I do not.

Q. Did you see any liquor there—did you see any liquor on that table? A. No, I did not.

Q. Did you sell any liquor to people at that table?

A. No, you see, I am not in the dining-room all the time, I am out of it a large percentage of the time, in fact, I was out of it that night a large percentage of the time.

Q. Now, Mr. Morrison, we have heard some testimony about two tables, will you please state to these gentlemen in a word, about [93] how many tables are in that dining-room and were there on the occasion in question, approximately?

A. This was on a Saturday night, and on Saturday nights when we are busy we put in folding tables, and we tell the patrons, "Now, this is only a makeshift table, if you will accept that, why, we are crowded, we will offer it to you," and that adds

(Testimony of Albert C. Morrison.)

to our regular amount of tables. We have over 100 tables on Saturday night.

Q. Do you know Mr. Lardi, your codefendant, Mr. Morrison? A. Yes, sir.

Q. The remaining codefendant? A. Yes, sir.

Q. How long, please, have you known him?

A. About, ever since he has been in our employ, nearly a year, I guess.

Q. He formerly worked for the Palace Hotel about 14 years?

A. That was his reference that he gave me when I engaged him.

Q. And you looked him up, did you?

A. Yes, sir.

Q. What was his position—his position and his duty?

A. His title is "captain," and his duties consist of floorwalker seating people to the tables when they come in and see that somebody attends to their wants.

Q. Was it a part of his duty to wait on the guests? A. No, sir.

Q. Or to receive payment of checks?

A. No, sir.

Q. Now, talking about checks, it is in evidence here, brought out on cross-examination, that there were checks made out and these checks were itemized with the various articles of food. Will you please explain to the jury, in a word, something about your check system, in other words, whether you keep a check on the food going out of the

(Testimony of Albert C. Morrison.)

kitchen and into the dining-room, how is that done?

A. A waiter is given a check when he has somebody to serve, when [94] he takes their orders it is written on the check, itemized. In addition to itemizing the check his duties consist of putting the cost of the article in front of each item, and each item must be put in singly, not grouped together. Then, when he gets his order from the kitchen, he presents that to the checker, the checkers have a cash register with a contrivance so that check can be put in there, in a sort of a slotted affair so an amount can be recorded. Now, if he brings up the entire order in one tray load, notwithstanding that he has itemized it, the check is rung up in one amount, in a group amount, a total amount, that amount that is on that check must correspond with the total that is itemized by the waiter in his own writing, and that gives you a double check on the food, or anything else that you may serve. Then, just below where the amount is totalled for the patron, there is another small portion of the check known as the stub. The total amount—that check is also put on that stub on account of the war tax, the Government regulations require that each customer, after he has been served and paid his check, must be handed this receipt.

Q. And the customer keeps the receipt, does he, or is supposed to? A. Yes, sir.

Q. Mr. Morrison, Mr. Lardi was asked by Mr. Geis, on redirect examination this question—

(Testimony of Albert C. Morrison.)

The COURT.—(Interrupting.) Who?

Mr. SCHLESINGER.—I beg your Honor's pardon.

Q. I mean Mr. Rinckel was asked by Mr. Geis, on redirect examination, this question, and gave this answer. "You said you did not pay any money to Mr. Morrison, did you pay any money of any kind or for any purpose to Mr. Lardi? And his answer was, "A tip only, I gave him a tip."
[95]

Q. How much?

A. I paid him \$2.00 the first night, \$1.00 going in and \$1.00 coming out and on the second night I gave him \$2.00, \$1.00 coming in and \$1.00 going out?" Did you participate in either of those tips?

A. No, sir, I didn't know anything about it.

Q. You are charged in the second count with having, on the 30th day of July 1921, with having been in possession of one pint bottle of port wine, one quart bottle of red wine, about two quarts of whiskey, one quart bottle containing whiskey and one quart bottle containing alcoholic liquor. Is that a fact, were you in possession of it? A. No.

Q. You are charged, in the third count, with having sold two gin cocktails, two loganberry highballs and four Scotch whiskey highballs. Did you sell any of those liquors, or any part of them?

A. No, sir, I did not.

Q. And finally, in the fourth count, you are charged with having sold, on the 30th day of July,

(Testimony of Albert C. Morrison.)

1921, two gin cocktails, two Scotch whiskey highballs? A. No, sir.

Q. Did you make any such sale as that?

A. No, sir.

Q. And was any sale of that kind made for a tip, or for any other purpose, or for gain, to your knowledge? A. No, sir.

Q. Or with your sanction? A. No, sir. (Tr. pp. 99-108.)

On cross-examination said witness testified as follows:

Mr. GEIS.—Q. Mr. Morrison, your office downstairs has a little room off of it, about six by eight or something like that, has it not

A. No, it has an outer office but the dimensions are bigger than that, the dimensions are greater than that.

Q. Mr. Carleton Wall testified that there is a little space off of your office about six by eight, or whatever the size may be, I [96] don't care how large it is, the entrance is from your office, and no other entrance or other exit, that is correct, is it?

A. He must have misunderstood you, that condition does not exist, there is a correct drawing of it and, if you will bring it here, I will do my best to elucidate it.

Q. You heard also Mr. de Spain telling about where he found the three bottles, and stating that, from your office, he went into a little—and through another entrance and in there he found, I think,

(Testimony of Albert C. Morrison.)

one or two—one in a desk drawer? You heard that testimony?

A. Yes, but that physical condition does not exist, he could not have done it.

Q. Mr. Wall says it does and Mr. de Spain?

A. That will show you that it does not, Mr. Geis.

Q. Well, is your office downstairs, the place where you sit or anybody else sits, has it another little office, or a little room connected with it, through which you can go from that office and cannot get out except without coming back, does such a condition exist downstairs, anywhere?

A. If I understand you correctly, there is *only way* you can get into my office, and that is through that outer office unless you were to break a window from the outside and climb in, but you can only get into my office from that outer office.

Q. Is your office just one room? A. Yes, sir.

Q. And is there no opening except to get in and out? A. Of that door as you see in the drawing.

Q. Well, what place is it that was described by Mr. de Spain and Mr. Wall downstairs where there is another little room, what place is that?

A. I would understand that to be that outer office, the outer office.

Q. I don't care whether it is the outer or inner office. [97]

Q. But there is such a place down there?

A. Yes, sir.

Q. And that is your place, your office?

(Testimony of Albert C. Morrison.)

A. No, it is not my office.

Q. Well, where is your office?

A. You have to pass through a door to go in my office, it is in another room.

Q. Who was in there that night, the night of the 30th of July? A. In my office?

Q. At the time the raid was made?

A. Mr. Hatton and myself.

Q. Were you there when Mr. de Spain came in?

A. No, sir, I was not, Mr. Hatton may have been because one of the men came downstairs and told me the place was being raided.

Q. Where were you when they came in?

A. In my office, at my desk.

Q. Downstairs? A. Yes, sir.

Q. Where did you go from there?

A. After I was told that the place was raided, I went upstairs to where the checkers are, and met Mr. Rinckel, who then, after the place was raided, served me with a warrant.

Q. And you were then downstairs at the time the raid was started? A. Yes, sir.

Q. Then you came upstairs and was served by Mr. Rinckel?

A. After the raid was practically over.

Q. Well, you were served by Mr. Rinckel with a search warrant? A. Yes, sir.

Q. Were you downstairs after that during the time of the raid?

A. I may have been, I don't remember.

Q. Were you down there when Mr. de Spain

(Testimony of Albert C. Morrison.)

came into that office? A. No, sir, I was not.

Q. Then you don't know that Mr. de Spain went down there at all?

A. Oh, no, only from his statement, no, I don't know. [98]

Q. Well, you heard his statement? A. Yes.

Q. And you heard him tell about the little room?

A. Yes, sir.

Q. That was correct, wasn't it?

A. Well, he called it a storeroom, I want to tell you it is an office.

Q. It is some kind of a room?

A. No, it is not, it is an office.

Q. Now, when a guest comes in and gives an order, Mr. Morrison, he has to go downstairs to fill it?

Mr. SCHLESINGER.—Q. The waiter has?

A. The waiter, yes, sir.

Mr. GEIS.—Q. He comes up by a checker?

A. Yes, sir.

Q. And it is checked there?

A. Yes, sir, approximately.

Q. Who sits at this end, or who is at that end? (Indicating.)

A. There are several clerks at that desk.

Q. Well, in any event he has got to pass by the desk? A. Yes, sir.

Q. Now, that check subsequently must go back to whom?

A. To the clerk, to put the total on it.

Q. And that total, after you are all through, the

(Testimony of Albert C. Morrison.)

checks must correspond to the money, must it not?

A. Yes, sir.

Q. And that is why you use that check, too, isn't it, to see whether or not the thing that was rung up corresponds with the check? A. Yes, sir.

Q. That is right, isn't it? A. Yes, sir.

Q. Whatever of money is paid on a check goes into the till and the money becomes the finances of the company? A. Yes, sir.

Q. That is right, isn't it? A. Yes, sir.

Q. In the evening, when you begin, do you give him more than one check at a time?

A. No, only one check.

Q. There is a record made of that check, isn't there? [99] A. Yes, sir.

Q. And that is also numbered, isn't it?

A. Yes.

Q. And that number must come back to the desk?

A. Yes, sir.

Q. Who does he get the check from, in the first instance?

A. A man known as the sheet clerk, he is the custodian of the checks in their blank form.

Q. But, assuming that I am a waiter—I don't think I would make a good one—when I come to serve somebody I have to first go and get a check, don't I? A. Yes, sir.

Q. And that is numbered? A. Yes, sir.

Q. And the stub is left in the book?

A. No, the stub is attached to the check, not even perforated.

(Testimony of Albert C. Morrison.)

Q. What is there to know,—the checker or the man who has the blank check, what is there for him to know whether that man returns that check at all or not, if there is not a blank stub there left in the book?

A. No, it is not left in the book when his check is totalled.

Q. I don't think we understand each other?

A. Yes, sir.

Q. Taking for illustration a bank check, most bank books have a stub attached?

A. This is not on that order at all.

Q. And when we write a check, we tear it off the stub and we sometimes put the date and the number of the check and all that on it for our use.

Now, the man who gives out the check to the waiter, does he have anything left with him to know what becomes of that check or who got that number? A. Yes, sir.

Q. Well, that is just what I want to know. Then suppose my check was \$3.00. I am a waiter?

A. Yes, sir.

Q. Now, he knows that I got that \$3.00, does he?

A. Yes, sir.

Q. And that \$3.00 will turn up sometime that night when you close up? A. Yes, sir. [100]

Q. You have stated, I believe, that if there were three bottles or any amount of liquor found in your office, or any place downstairs, you knew nothing at all about it? A. No.

Q. Now, speaking about these lockers that you

(Testimony of Albert C. Morrison.)

say are on the Powell Street side, and your care in seeing that the waiters do not serve anything or bring anything there, how often did you go through those lockers?

A. I merely go to the region where they are, I do not search the lockers.

Q. You don't know whether they are brought in there at all or not?

A. Pardon. (Question read.)

A. Because it is not necessary, just in anticipation of theft or anything of that sort, the lockers have no panel, they have a wire grating.

Q. What is kept in there?

A. Their clothes, presumably.

Q. Just their clothes, they change their clothes and put on their waiter's uniform, or whatever it may be? A. Yes.

Q. That is all that is used in there?

A. That is all they were intended for, Mr. Geis.

Q. But you don't go through them very often to see whether there is any liquor in there, do you?

A. No, I go there occasionally to inspect the premises, to see if the people are doing their work, in so far as cleanliness is concerned, in the general direction of a business.

Q. You say those lockers are on the Powell Street side or on the Geary Street side?

A. They are on the Powell Street side, yes, sir.

Q. How far from the kitchen?

A. Directly adjoining.

(Testimony of Albert C. Morrison.)

Q. Is there any opening to that from the kitchen? A. Yes, sir.

Q. Now, if a waiter was to serve liquor from downstairs, if he had it in his locker, of course, he would have to go to his locker [101] and get it? A. Yes, sir.

Q. Now, when he came upstairs and went by the checker, what would the checker do?

A. Do you mean if he saw the liquor?

Q. If he saw something in a glass, what would he do? A. Do you mean if he saw the liquor?

Q. If he saw something in a glass, what would he do?

A. Why, he would not tolerate it if he was following his orders.

Mr. SCHLESINGER.—I submit that is not exactly a fair question.

Mr. GEIS.—I will withdraw it.

The WITNESS.—I may add, Mr. Geis—

Mr. SCHLESINGER.—Mr. Morrison, add nothing. A. So he will get through.

Mr. GEIS.—If you have anything you want to say, I will be glad to hear it.

A. I was about to say that waiters sometimes have had chickens in their pockets and we discharged them for having chickens in their pockets. They get chickens cooked down in the kitchen and put them in their pockets and then when they got inside they would pull them out and serve the guests in some manner, and we would discharge them for that the same as we discharged them for selling

(Testimony of Albert C. Morrison.)

liquor. Those things are possible without the connivance of the manager.

Q. Mr. Morrison, I want to ask you, would you mind coming here just a minute? A. Yes.

Q. The top of the map which you have introduced in evidence, of course, is the north, and the north of that is Geary Street, isn't it?

A. The north of our premises would be.

Q. Now, I call your attention to what is known as the "outer office," marked there "outer office," do you notice that? A. Yes, sir. [102]

Q. Here to the right of the map as it hangs, which would be to the east, is marked "Closet" or something—what is that?

A. That is a clothes closet.

Q. And what size is it?

A. I would say about two and a half by four, two and a half by three and a half, probably.

Q. Just next to it, up on this other side, Mr. Morrison, further east, there is another closet?

A. Yes, sir.

Q. What size is that one?

A. That is a closet with a lot of shelves in it.

Q. About what size?

A. I would say that is about three by five.

Q. Is there any exit or entrance into the office save from your own office? A. No, there is not.

Q. Mr. Morrison, during the recess I called you up? A. Yes, sir.

Q. You recognized me, did you? A. Yes.

(Testimony of Albert C. Morrison.)

Q. I asked you to bring with you, if you could, a menu used by the Techau Tavern of July 31st?

A. Yes, sir.

Q. Were you able to find one?

A. No, I brought two menus so to be sure I would be right.

Q. You did what?

A. I brought two menus so as to be sure I would be right, I brought the former one that we used for lunch and dinner, and then I brought the one that we used after the theatre hour, which is approximately the same all the time. Then I also brought the waiter's check that you asked me for.

Q. Are these the things that you brought, Mr. Morrison, from your place?

A. At your suggestion.

Q. What became of the checks that were used on the evening of July 31st, 1921?

Mr. SCHLESINGER.—July 30th?

Mr. GEIS.—Q. July 30th, yes?

A. Well, I think they [103] are destroyed, we destroy them at regular intervals because they are cardboard checks and there are a good many of them, and the accumulation would be so that they could not consistently or conveniently be kept, they would serve no particular purpose to keep them, we generally kept about a month's supply of checks.

Q. In any event, you do not have it? A. No.

Q. Did you make any search of your premises

(Testimony of Albert C. Morrison.)

for the checks? Now, when I say "checks" I mean these cardboard checks for July 30, 1921?

A. No, I don't think we did.

Q. Now, the form of check, however, that was used generally, and used on that night, is the same as this, the general form of the check?

A. Yes, sir, you see this is the part that I meant, that the customer, by the Government regulation, the Federal regulation, a customer should get this, this is a receipt for what he should pay.

Mr. GEIS.—Now, I will ask that this be introduced in evidence.

Mr. SCHLESINGER.—No objection.

Mr. GEIS.—U. S. Exhibit No. 6.

Q. The menu that you used during the day is substantially the same as that used in the evening?

A. The one in your left hand that would be used at the luncheon hour, and at the dinner hour up to say nine o'clock, then this one would take its place.

Q. If it is a fact that the dinner was ordered on July 30, 1921 about—oh, say, 7:30, which one of these would be used?

A. The one in your left hand.

Q. And the one in my right hand would not be used until about half-past nine?

A. Nine o'clock or thereafter.

Q. And it is then safe to say that the one actually used by Miss [104] Simpson and Mr. Rinckel on the evening of July 30, 1921, if they

(Testimony of Albert C. Morrison.)

ordered at the time they claim, 7:30 or along in there?

A. Would be sure to be the one in that form.

Q. And this one here would be substantially the same as the one used on July 31st? A. Yes, sir.

Mr. GEIS.—No objection to having that in?

Mr. SCHLESINGER.—No objection at all.

The COURT.—When you say July 31st you mean July 30th, you can stipulate to that.

Mr. GEIS.—Occasionally I use the numerals 31.

The COURT.—Well, the testimony is that on the evening of July 29th the parties mentioned ordered nothing but liquor and on July 30th they ordered dinner.

Mr. SCHLESINGER.—That is their testimony, yes.

Mr. GEIS.—I think that is all.

Mr. SCHLESINGER.—No further questions.

(Tr. pp. 109–118.)

Testimony of V. E. Lardi, for Defendants.

V. E. LARDI, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

I am captain of waiters at Techau Tavern. I have been employed there probably nine months, and was such captain of waiters on the nights of July 29th and 30th, this year. I think I saw or spoke to A. S. Rinckel and Miss Daisy Simpson, who have testified here, on either of those nights I may have spoke with a man named Belmont who

(Testimony of V. E. Lardi.)

had a woman with him on the night of July 29, 1921.

Q. You are sure—what makes you sure that you spoke to a man named Belmont on that night?

A. Well, when any captain sees the guests, why, he goes over and takes the order, and I goes [105] around and I notice Mr. Belmont was feeling pretty good.

Q. How did you know it was Mr. Belmont, did he speak to you, did he introduce himself?

A. The way I got the name was when they made their reservation.

WITNESS.—(Continuing.) Mrs. Belmont made the reservation, that is, the woman giving her name as Mrs. Belmont. Neither did this woman or Mr. Belmont on that night, or on either of those nights, ask me for a drink of intoxicating liquor.

Q. Did you, on that night, or on either of those nights, speak with Mr. Morrison concerning any service whatsoever to Mr. Belmont and his pretended wife?

A. No, sir, the first place, I do not serve anything.

Q. To the woman who said she was Mr. Belmont's wife to you, did you serve any intoxicating liquor?

A. No, sir, I did not, I don't serve anything at all.

Q. Did you ever serve any intoxicating liquors to anyone at any time in Techau Tavern?

A. No, sir.

(Testimony of V. E. Lardi.)

Q. Did you receive any money from Mr. Belmont at any time in Techau Tavern?

A. I don't think I did, I may receive money like any other guest when they go out and said good bye to me and give me a tip at the door.

Q. He might have given you a tip?

A. He might.

Q. On the night of the raid did you speak to Mr. Belmont or the woman who was with him after the raid and tell them to come to the Tavern again?

A. Not in that manner, the only way I spoke to them, when they said good bye to me, I told them to call again when they left the place.

Q. You told them to call again?

A. I shake hands and said, "Call again."

WITNESS.—(Continuing.) I did not say anything to them at [106] all concerning the raid. Prior to my employment at Techau Tavern I was captain at the Palace Hotel for about 14 years.

Q. Did you turn any money that you might have received in tips in to Mr. Morrison or to any officer of the Techau Tavern Company?

A. No, sir, that belongs to me, the tips. (Tr. pp. 118 to 120.)

On cross-examination the witness testified as follows:

I could not tell where Mr. Belmont and the lady were located because another captain seated them. Another captain seated them at both times, I never seated them at all.

(Mr. A. S. Rinckel and Miss Daisy Simpson are

(Testimony of V. E. Lardi.)

brought into the courtroom and stand at the counsel table.)

Mr. GEIS.—Q. To the best of your recollection is that the man who said his name was Belmont?

A. I couldn't say exactly whether it was him or not.

Q. Now, here are the two persons, the one who gave his name as Belmont and this is the lady that was with him. Now, do you recognize them?

A. I couldn't remember them at all, to tell you the truth.

Q. You don't remember either of them?

A. No, I see so many guests there that I cannot exactly remember whether they are the party or not.

Q. You cannot recognize them at all, they look to you like perfect strangers, do they?

A. Well, I may have seen them, but I couldn't place them exactly.

Q. Now, you intimated that one of them was not very sober, you intimated that one of them was not very sober, did you? A. Yes, sir.

Q. Well, which one of these was it?

A. They were both acting the same way as one another.

Q. You say you don't know them? A. No, sir.
(Tr. pp. 120-121.) [107]

On redirect examination the witness testified as follows:

On the night in question when Mr. Belmont spoke

(Testimony of V. E. Lardi.)

to me I noticed or I thought that he was under the influence of liquor, and I recalled that it was Mr. Belmont because they had made a reservation. I do not wait on the tables. I do not make out checks. I am there as captain to seat the guests, that is what I do. (Tr. p. 121.)

Testimony of A. B. Stratikis, for Defendants.

A. B. STRATIKIS, called as a witness on behalf of the defendant, Morrison, being first duly sworn, testified as follows:

I am the head man of the Techau Tavern dining-room. I have been working there about eight years.

Q. And have you noticed a woman you saw here Friday afternoon, a Miss Simpson?

A. I have seen her, yes, sir.

Q. About when, what time did you first meet her?

A. The first time I met her it was about—

Q. (Interrupting.) Having in mind the time of this raid, how many days before then did you see her?

A. About three or four months prior to the raid.

Q. And won't you please state, as briefly as you can, the circumstances under which you saw her, just tell the gentlemen in the box here?

A. She came up to the private dining-rooms one night—

Mr. GEIS.—(Interrupting.) What is the purpose, Mr. Schlesinger?

(Testimony of A. B. Stratikis.)

Mr. SCHLESINGER.—We want to show she applied for drinks, I want to show that she and her companion, an agent, had a bottle of wine and were ordered off the premises.

Mr. GEIS.—If it is for the purpose of impeachment, I insist that you ask the witness a direct question. For impeachment you are required to ask the same question. [108]

Mr. SCHLESINGER.—There is no doubt that it is a technical rule of law.

The COURT.—There is nothing to impeach, the witness herself testified she was there, that they brought in a bottle of wine.

Mr. SCHLESINGER.—And that she was ordered out of the place, do you admit that?

Mr. GEIS.—What is that?

Mr. SCHLESINGER.—That they were ordered off the premises.

Mr. GEIS.—No, I won't admit it, she didn't say she was ordered off the premises.

Mr. SCHLESINGER.—Q. What is the fact about it, what happened three months earlier than this raid with respect to that woman?

A. She came one night, it was a Saturday night about ten o'clock, she sent for me, she was in the private dining-room, and when I went upstairs she said to me that she was sent from some friend of mine whom she mentioned the name, but I don't remember the name, and she said that she wanted to have a drink. I told her that we didn't serve any drinks. She insisted that we did, and I told

(Testimony of A. B. Stratikis.)

her that we do not. I left her, within twenty minutes she sent for me again and I went upstairs and she offered me a glass of red wine in a water glass. She told me that I was very mean, that I refused her, and she had to go outside and get her own wine. I told her that I did not care to drink her wine, and she was not allowed to have served the wine in there, and I told her that she could not drink the wine there. As a matter of fact, I asked the waiter that was waiting on them whether she had ordered any food, to cancel it, and the waiter said that they did not have any order of food ordered yet. I went downstairs and reported [109] this to Mr. Morrison and he asked me to go upstairs right away and order her out which I did, but, by that time they had gone.

Q. Would you be able to identify the man who accompanied her on that occasion, the agent of the Government who was with her?

A. I couldn't see him very well, he was on the left-hand side of the room.

Q. Now, when did you next see Miss Simpson, if at all, about when?

A. I saw her on the night of the raid, the last Saturday of the month of July.

Q. Were you on the floor that day?

A. Yes, sir.

Q. The dining-room was crowded with guests, was it not? A. Yes, sir.

Q. Every table occupied? A. Yes, sir.

Q. Did you have any conversation with her?

(Testimony of A. B. Stratikis.)

A. I did not have a direct conversation with her.

Q. Did you with the man who accompanied her?

A. With another one.

Q. Did you observe their condition? A. I did.

Q. What was their condition as to sobriety?

A. Mr. Jack Parrish, the captain whom I had in charge that particular night, reported to me—

Q. What did you see then?

A. It appeared that Mr. Belmont had made reservations that night with Mrs. Belmont. They came there by a little—

The COURT.—Q. What you saw.

The WITNESS.—I saw Mr. Belmont and Mrs. Belmont had made reservations for 7:30.

Mr. SCHLESINGER.—You saw that?

A. I saw the name [110] on the book, this is about eight o'clock, Mr. and Mrs. Belmont both came, but my assistant at the door received them, I did not receive them, and sent them to a table nearby the door, and after they sat there they asked him for a better table and for something to drink.

Q. Who did they ask?

A. They asked Mr. Parrish, the man that I had assisting me at the door.

Q. Within your hearing—if not, you must not repeat it, did they ask Mr. Parrish within your hearing for a better table?

A. No, but Mr. Parrish came and reported to me.

The COURT.—Just what you know.

A. He came and reported to me that Mr. Belmont and Mrs. Belmont had arrived and they were

(Testimony of A. B. Stratikis.)

sitting right at the table nearby the door.

Mr. SCHLESINGER.—Now, did they get a better table, did they receive a better table?

A. They did not.

Q. And why? A. I told Mr. Parrish—

Q. (Interrupting.) Just give us the fact, why didn't they receive a better table?

A. They looked to me that they were both intoxicated.

Q. I will ask you whether or not you saw any liquor served to them that night? A. I did not.

Q. Did they apply to you for drinks on that occasion? A. They did not. (Tr. pp. 122–125.)

On cross-examination the witness testified as follows:

I saw a reservation in my reservation book. I couldn't say who put it there, I have eight captains in my dining-room besides myself who are authorized to take reservations and enter them in the reservation book. There was no captain of that particular table where these people were seated, it was an extra table placed nearby the door. [111]

The nearest captain to that place was myself and my assistant. My assistant is Mr. Jack Parrish. Mr. Lardi is a captain. He is in another neighborhood. I did not see them coming in but I saw them when they were already seated at the table. When they were seated at the table I was standing right at my desk. It is about four or five feet from their table. They were looking at the crowd, watching. I did not speak to them. I went as close as this,

(Testimony of A. B. Stratikis.)

and I looked at them and that is all, I did not talk to them. Mr. Parrish talked to them in my presence. I did not hear what he said and I don't know what he said to them. When I next saw them they were sitting at another table to the left end of the house. The whole dining-room in under my supervision. They were about forty feet away from where they were seated. They got another table. I did not see them going over to the other table. I do not know how long they were there. My duties there in the evenings are supervising the whole dining-room, taking orders, see that the orders are served properly and giving orders to the captains and waiters to serve the food. Once in awhile I go downstairs. I say the socalled Mr. and Mrs. Belmont were drunk because they appeared to me, from the way they were looking at each other and the crowd that they were drunk. I can always tell a drunken man from a sober man.

Q. All you base it on, then, is the way they looked at each other and the way they looked at the crowd?

A. From the fact that they had applied to me for drinks before that, prior to that, and from the fact that I had seen them having the wine, I saw them drinking the wine which they offered to me and I refused.

Q. That is the reason you thought they were drunk that night?

A. They acted to me like they were drunk.
[112]

(Testimony of A. B. Stratikis.)

Q. And the only thing that you say that you saw the macting was the way they looked at each other and the way they looked at the crowd?

A. Yes, sir.

Q. Now, is that true?

A. Yes, sir. (Tr. pp. 126-128.)

Testimony of John Parrish, for Defendant Morrison.

JOHN PARRISH, called as a witness on behalf of the defendant, Morrison, being first duly sworn, testified as follows:

I reside at the Rialto Hotel, Sutter Street. I have been a resident of San Francisco since I came back overseas last June. I served in the World's War in the capacity as Sergeant of the Canadian Army. I was discharged in May, 1920. I have been in the service of the Techau Company fifteen years previous to my service overseas. On my return here I regained my old position. It was kept open for me. I know Mr. Morrison the defendant here and Mr. Lardi the codefendant. I was in the courtroom Friday afternoon when a man named Pinckel, *alias* Belmont was pointed out.

Q. Were you in the Tavern performing your usual duties on the 30th day of July and the 31st of July, 1921?

A. Yes, sir, the last Saturday in July I was.

Q. Did you have occasion to observe there the parties calling themselves Mr. and Mrs. Belmont?

(Testimony of John Parrish.)

A. Yes, sir, I met them at the door and seated them.

Q. Won't you please tell the jury, in your own way, what conversation you had with them and what you observed?

A. Yes, sir, that night, about ten minutes of eight, I was on duty at the door, a man and woman came to the door and I saw them hesitate and I said, "How many in your party?" They said, "Two, a reservation for Mr. Belmont." "Oh," I said, "The reservation is somewhat delayed" and I said, "We have had to give the table away, quite a rush," but [113] I said, "If you will be seated here, I will take care of you until I can get you another table." They sat there a few minutes and we were kind of busy, and I went to them to try to get their order and I said, "Have you ordered yet?" They said "No, have you got that other table?" I said, "No, I have not." They said, "How about a little drink?" I said, "I don't understand what you mean about a drink," I looked them over for a minute and I kind of thought they were under the influence of liquor, and I went to the head waiter then, I said, "There is a party there named Belmont, they want a ringside table, I think they do not look to me as if they need it, they should be back in the house somewhere." He said, "All right, I will look them over." So, he came around and I said, "What do you think about it?" I said "I think they have been drinking."

(Testimony of John Parrish.)

A. I was talking to Mr. Brown, the head waiter, he said, "I think they have been drinking, what do you think about it?" I said, "Well, that is it," that is what we came to the conclusion, that they were under the influence of liquor, the man I thought more than the woman, the woman never said anything to me, but eventually they were moved to another location but not very prominent, in the rear of the house.

Mr. SCHLESINGER.—Q. Did you see any drinks served to them that night?

A. No, sir, I never saw them.

Q. Or any other night? A. No, sir.

Q. Who is it that takes the orders in Techau and does the serving?

A. Well, usually the captain, and turns it over to the waiter and supervises the serving to see that they get service.

Q. Was Lardi in the habit of serving?

A. Just the same capacity as myself, serving meals, as far as I know of.

Q. Did you see Lardi serving that night?

A. No, my jurisdiction [114] was by the door, and I did not pay much attention to the tables at that end of the room.

Q. What was the condition of the dining-room as to being crowded or otherwise on those occasions?

A. Well, Saturday night it is usually—it was fairly well crowded, and as a matter of fact, we had not another table, the only table that was left

(Testimony of John Parrish.)

for the Belmont people was a little one at the desk.

Q. Will you please tell the jury, in a word, how the tables are covered with cloth, how far down the cloth extends?

A. Well, they are pretty well to the floor, I think, yes, usually to the floor. (Tr. pp. 128-131.)

On cross-examination the witness testified as follows:

I met them at the door. I was in here when Mr. Rinckel was on the witness-stand and I was one of the persons who stood up here. I noticed him, I called Mr. Wall's attention to him; I said, "This is Mr. Belmont," immediately I saw him I knew him. I knew him right away. Well, that is one of the things that we usually are adept at, is remembering faces. I had never seen him before. I have never seen Miss Simpson, only on that night. They were the two persons that came in now known as Mr. Rinckel and Miss Simpson. I was at the door when they arrived and I seated him. I took them to a little table right beside the door. I spoke first. I said, "How many in your party?" They said, "A reservation for Mr. Belmont." I told them they were kind of late for their reservation, I understood that that reservation—as a matter of fact, I put it in the book seven o'clock, but it was about ten minutes of eight when they arrived after postponing it once over the telephone. Never in my life, to my knowledge, had I seen those people before. I put them on the reservation book [115] because the

(Testimony of John Parrish.)

reservation was called over the telephone, any person that calls for reservation and gives their name we put it in the book, naturally, to take care of it. I was called to the telephone, after they had postponed their reservation the first time, but I believe there was someone else standing at the telephone. I wrote the name in the book "Belmont." I got it from the person who was at the telephone taking reservations. I cannot remember who it was now, one of the captains, I don't know which. The reservation must have been made around seven, Saturday night, between seven and the time they arrived, I couldn't swear to the time because there was no immediate reason to pay any attention to it, only that it was a reservation. My best judgment was that it was about seven o'clock and I marked it on the book. They were to arrive at seven-thirty. It was ten minutes of eight when I met them at the door. There was a reservation made, I do not make the reservation, I enter it into the book, and Mr. Brown, the head waiter, assigns them to a certain table. He assigned them to a certain table. I do not know the number of the table. It was a ringside table, I believe, that they were assigned to, or something down near the end of the room. I seated them at another table. After a few minutes I saw there was no one went to them to take their order and I went to them and asked them, "Did they order?" They said they had not done so. I said, "Could I take it for you?" "Well," they said,

(Testimony of John Parrish.)

“What about this other table?” I said, “Well, there is not one.” so they said, “How about a little drink.” Well, I kind of laughed and walked away from them, saw Mr. Brown and told him about the party, the Belmont party was in, you know, I thought they were kind of under the influence of liquor and I did not think that they should have a table anywhere prominent. So he [116] said, “Well, I will look them over,” so he did. After that it was out of my hands altogether, and I had nothing further to do with it. I did not observe them any further during the evening at all.

Q. What was it that made you think they were intoxicated, what particular thing now makes you think they were intoxicated, and so state on the witness-stand?

A. Well, their actions, for one thing.

Q. Tell us what actions you observed?

A. Facial expressions.

Q. And what else?

A. I was not close enough to smell their breath, I figured in my way of thinking, of course, I may be different than anybody else, but I can tell whether people are intoxicated or partially having handled people for twenty years in this business.

Q. I suppose I can when I see a man drunk and he weaves and staggers?

A. There was no staggering about it.

Q. Is there anything else that causes you to

(Testimony of John Parrish.)

say at this time that they were intoxicated than what you stated?

A. I figured their asking for a drink, that is one of the things that made me think so.

Q. What else made you think they were intoxicated? A. I have no other reason.

Q. Nothing else, is there? A. No.

Q. Nothing at all? A. No. (Tr. pp. 131 to 135.)

**Testimony of John Parrish, for the Government
(Recalled).**

JOHN PARRISH, recalled by the United States, testified as follows:

Mr. GEIS.—Q. Mr. Parrish, when Mr. Rinckel and Miss Simpson, with the name, as you say, of Belmont, came in, do you recall that they asked you for Mr. Lardi? A. No, sir. [117]

Q. Well, will you say they did not?

A. They did not.

Q. Who did they ask for?

A. They did not ask for any person.

Q. Then, when they were seated at the table, the first table, who took them over to the other table?

A. Well, that I don't know, sir.

Q. You don't know who did that?

A. I don't know who did that, I remember going out of the room for an order and when I came back I noticed that they were not there and they had been moved.

(Testimony of John Parrish.)

Q. You don't know who took them over to the other place?

A. I couldn't say, sir, I don't know. (Tr. p. 135.)

Testimony of Miss Daisy Simpson, for the Government (Recalled in Rebuttal).

Miss DAISY SIMPSON, recalled by the United States in rebuttal, testified as follows:

Mr. GEIS.—Q. At the time when you arrived at Techau Tavern on the evening of the 30th, did you meet some one at the door?

A. Yes, we met a man at the door, and we asked for Mr. Lardi, telling him that we had telephoned and made a reservation.

Q. Then you were seated, as I understand it, at a table?

A. Yes, we were seated at a table to the right of the entrance, a two chair table.

Q. I believe you heretofore testified that Mr. Lardi took you over to the other table?

A. Yes, well then, Mr. Lardi came to us and took us to a table at the south end of the dining-room. (Tr. p. 136.)

Testimony of A. S. Rinckel, for the Government (Recalled in Rebuttal).

A. S. RINCKEL, recalled by the United States, in rebuttal, testified as follows:

Mr. GEIS.—Q. Mr. Rinckel, at the time you arrived at [118] Techau Tavern on the evening

(Testimony of A. S. Rinckel.)

of the 30th of July, 1921, you met some one at the door, did you not? A. Yes, sir.

Q. What, if anything, did you say to him, or did you ask for anybody?

A. I asked for Mr. Lardi. (Tr. p. 136.)

When the above-entitled cause was called for trial, and after the impanelment of the jury, and before any testimony was taken, and before any evidence was offered or introduced in said cause, the defendants Albert C. Morrison and V. E. Lardi, by their counsel, in open court, then and there served and filed their written objections, and argued said objections to the introduction in evidence of that certain property, and each and every article thereof, described in a certain inventory attached to an alleged search-warrant issued on the 30th day of July, 1921, by Albert M. Hardi, United States Commissioner for the Northern District of California, and which property had been seized by virtue of said alleged search-warrant. That said alleged search-warrant was based upon certain alleged affidavits of D. W. Rinckel and A. S. Rinckel, and addressed to the United States Prohibition Enforcement Officer, and to his deputies.

The said alleged search-warrant, supporting affidavits and inventory attached thereto as aforesaid, are in the words and figures, as follows:
[119]

United States of America,
Northern District of California,
County of Alameda,—ss.

On this 30th day of July, 1921, before Albert M. Hardie a United States Commissioner in and for the Northern District of California, personally appeared this day A. S. Rinckel who being first duly sworn, deposes and says:

That on the 29th day of July 1921, he purchased at Techau Tavern, 247 Powell Street, San Francisco, California, two gin cocktails, four Scotch whiskey highballs and two Loganberry cocktails and that he paid for said intoxicating liquor the sum of \$9.27.

That affiant states that in and upon the afore-said premises and since Title II of the said Act went into effect, to wit, after February 1, 1920, intoxicating liquor, to wit: alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and any spirituous, vinous, malt and fermented liquor, liquids, and compounds, medicated, proprietary, patented, containing one-half of 1 per centum or more of alcohol by volume and fit for use for beverage purposes, was and now is, kept, sold, possessed and bartered, in violation of Title II of the said National Prohibition Act, and particularly in violation of Sections 3 and 21 of said Title II.

A. S. RINCKEL.

Subscribed and sworn to before me this 30th day of July, 1921.

ALBERT M. HARDIE,
United States Commissioner, Northern District of
California.

I hereby certify this to be a full copy of an original affidavit on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 27th day of October, A. D. 1921.

[Seal] ALBERT M. HARDIE,
United States Commissioner, Northern District of
California. [120]

United States of America,
Northern District of California,
County of Alameda.—ss.

On this 30th day of July, 1921, before me Albert M. Hardie, a United States Commissioner in and for the Northern District of California, personally appeared this day D. W. Rinckel who being first duly sworn, deposes and says:

That he is and at all times herein mentioned was a Federal Prohibition Agent in and for the Northern District of California, and as such makes this affidavit and presents the facts and circumstances and conditions hereinafter set out that heretofore came to knowledge of and as ascertained by affiant for the purpose of having issued hereon and hereunder a search-warrant under and pursuant to the provisions of Title II, of the National Prohibition Act, representing the issuance of search-warrants,

to search the following described premises, to wit: Techau Tavern at 247 Powell Street, City and County of San Francisco, State of California, including dining-rooms, booths, kitchen, basement, lockers, closets, safes, office, outbuildings, being entire premises with outbuildings, attached and connected thereto.

That affiant states that in and upon the aforesaid premises and since Title II of the said Act went into effect, to wit, after February 1, 1920, intoxicating liquor, to wit: alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and other spirituous, vinous, malt, and fermented liquor, liquids, and compounds, medicated, proprietary, patented, containing one-half of one percentum or more of alcohol by volume which are fit for use for beverage purposes, was and now is, kept, sold, possessed and bartered, in violation of Title II of the said National Prohibition Act, and particularly in violation of Section 21 of said Title II. That this affidavit is based upon the affidavit hereto attached and which is made a part hereof.

That it will be necessary to search the said premises in order to secure the said intoxicating liquor for the United States Government and that it will be impossible to secure the aforesaid intoxicating liquor without the aid and use of a search-warrant.

WHEREFORE affiant prays that a warrant to enter the said premises and there to search for the said intoxicating liquor be issued pursuant to the statute in such cases made and provided.

D. W. RINCKEL.

Subscribed and sworn to before me this 30th day of July, 1921.

[Seal] ALBERT M. HARDIE,
United States Commissioner, Northern District of
California.

I hereby certify this to be a full copy of an original affidavit on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 27th day of October, A. D. 1921.

ALBERT M. HARDIE,
United States Commissioner, Northern District of
California. [121]

The President of the United States of America to
The United States Prohibition Enforcement
Supervisors and to His Deputies, or Any or
Either of Them, GREETING:

WHEREAS, D. W. Rinckel has heretofore, to wit, on the 30th day of July, 1921, filed with me, ALBERT M. HARDIE, a United States Commissioner for the Northern District of California, at Oakland, his affidavit in which he states that he is and at all times therein mentioned was, a Federal Prohibition Agent for the Pacific Division, and as such, makes his affidavit and presents the facts, circumstances and conditions hereinafter set out that theretofore came to the knowledge of, and as ascertained by him for the purpose of having issued thereon and thereunder a search-warrant under and pursuant to the provisions of Title II of the Act of Congress of October 28, 1919, to wit, the

National Prohibition Act respecting the issuance of search-warrants, to search the following described premises, to wit, Techau Tavern, at 247 Powell Street, City and County of San Francisco, State of California, including dining-rooms, booths, kitchen, basement, lockers, closets, safes, office, outbuildings, being entire premises with outbuildings attached and connected thereto.

That affiant states that in and upon the aforesaid premises and since Title II of the said Act went into effect, to wit, after February 1, 1920, intoxicating liquor, to wit, alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and other spirituous, vinous, malt, and fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, containing one-half of 1 percentum or more of alcohol by volume which are fit for use for beverage purposes, was and now is kept, sold, possessed, and bartered, in violation of Title II of said National Prohibition Act and particularly in violation of Section 21 of said Title II.

That it will be necessary to search the said premises in order to secure the said intoxicating liquor for the United States Government, and it will be impossible to secure the aforesaid intoxicating liquor without the aid and use of a search-warrant; whereupon affiant prays that a search-warrant issue;

NOW, THEREFORE, pursuant to Section 25, Title II of the Act of October 28, 1919, known as the National Prohibition Act, you are hereby authorized and empowered to enter said premises

hereinabove described, and each and every building on said premises, in the day or night-time, and thoroughly to search for the said intoxicating liquor which is concealed in violation of said Act of October 28, 1919, and to seize the same and take it into your possession to the end that the same may be dealt with according to law, and hereof to make due return with a written inventory of the property taken by you or either of you without delay.

WITNESS my hand this 30th day of July, 1921.

[Seal]

ALBERT M. HARDIE,

United States Commissioner, Northern District of California. [122]

INVENTORY OF PROPERTY SEIZED BY
VIRTUE OF WITHIN SEARCH-WARRANT.

- 1 1/4-Gal. Bottle Port Wine, contained about 4 ounces.
- 1 1/4-Gal. Bottle Whisky, containing about 2 ounces.
- 1 1/4-Gal. Bottle Wine, full.
- 1 1/4-Gal. Bottle Unknown liquor.
- 1 Pint Bottle Whisky, nearly full.
- 1 Pint Bottle 1/3 full.
- 1 Pint Bottle Gin and water full.
- 1 Pint Bottle Whisky, 1/4 full.
- 1 Pint Bottle Containing drinks taken from table, (liquor unknown).
- 1 Pint Bottle with Doctors Prescription taken from table (Whisky).
- 1 Pint Bottle Whisky 1/2 full.
- 1 Pint Bottle Whisky 1/4 full.

1 Pint Bottle Containing Highballs.

1 1/2-pt. Bottle Containing Highballs.

3 Pints Unknown Liquor.

I. H. M. Kupser, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

July 30, 1921.

H. M. KUPSER.

Subscribed and sworn to before me this 4th day of August, 1921.

[Seal]

ALBERT M. HARDIE,

United States Commissioner, Northern District of California.

United States District Court. No. 9720. U. S. vs. Morrison et al. Deft. Exhibit, Re Motion to Exclude Evidence. Filed Oct. 28, 1921. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.
[123]

Said written objection served, filed and argued as aforesaid, are in the words and figures as follows, viz:

“In the Southern Division of the District Court of the United States in and for the Northern District of California.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

NOTICE OF OBJECTION.

To E. FORREST MITCHELL, United States Prohibition Enforcement Supervisor, D. W. Rinckel, Prohibition Enforcement Agent; and to the United States Attorney in and for the Northern District of California, and Robert H. McCormack, Special Assistant to the Attorney General of the United States.

We hereby notify you and each of you that the defendants and each of them intend to object, and will object, to the introduction in evidence of that certain property, and each and every article thereof, described in a certain inventory attached to an alleged search-warrant issued on the 30th day of July, 1921, by Albert M. Hardie, United States Commissioner for the Northern District of California, and based on certain alleged affidavits of D. W. Rinckel and A. S. Rinckel, and which said search-warrant is addressed to the United States Prohibition Enforcement Supervisor, and to his deputies, or any or either of them.

Said objection will be made upon the grounds that the search-warrant under which said property was taken was and is void in the following particulars:

(1) The supporting affidavits are based on information and belief.

(2) That the particular affidavit under which said search-warrant was issued is based upon information received from another person, and was not based upon the personal knowledge of the affiant.

(3) That both the affidavit and search-warrant failed to name a known defendant, and there is no averment in the affidavit setting forth that any one was about to commit any crime against the laws of the United States, or was using the property or about to use the property or premises for the commission of any felony.

(4) That said search-warrant does not show probable cause and is not supported by affidavit naming or describing any particular person or persons.

(5) That said search-warrant is in violation of the Fourth and Fifth Amendments to the Federal Constitution, and is also in violation of the provisions of the Volstead Act. [124]

(6) That said property was seized and taken by the Prohibition Enforcement Supervisor and Prohibition Enforcement Agent, hereinbefore referred to, without any lawful warrant of any kind and without the consent of the defendants, or any of them, and it is the intention of the Government Officials to introduce the same in evidence against the defendants.

(7) That said property was taken solely under the search-warrant heretofore referred to.

Dated: October 28, 1921.

BERT SCHLESINGER,
THOS. L. LENNON,
Attorneys for Defendants."

That said objections were overruled by the Court, to which ruling of the Court the defendants Albert

C. Morrison and V. E. Lardi, then and there in open court duly excepted.

That the Court gave the following charge and instructions to the jury.

“INSTRUCTIONS.

By The COURT.—Gentlemen: The defendants, Morrison and Lardi, are on trial before you under an information charging them, jointly with two others who are not on trial, in four counts with certain violations of the National Prohibiton Law. The first count charges that they maintained a nuisance at Teehau Tavern, in that they kept there, wilfully and unlawfully, certain intoxicating liquors, to wit: gin, whiskey, port wine and red wine. This is averred to have been committed on the 30th day of July of this year.

The second count charges that, at the same time and place, they violated the Act in having this same liquor in their possession at this place.

A third count charges them with having violated the law on the 29th of July, in that they did sell certain intoxicating liquors, to wit: two gin cocktails, two loganberry highballs and four Scotch whiskey highballs.

And a fourth count charges them with having violated the law, in that they did sell, at the same place on the 30th day of July, two gin cocktails, and two whiskey highballs.

Now, of course, it is idle for me to say to you gentlemen that there is considerable question, throughout some sections of the country, as to the advisability of having adopted the Eighteenth

Amendment and the consequent legislation, but the Amendment was adopted, and it is part of the Constitution. And the Prohibition Law was enacted, and it has been tested out before the Supreme Court of the United States, and it is now the law of the land, and it is equally your duty, with mine, to enforce this law whenever it is violated, whether we are in sympathy with it, or its purposes, or not. [125]

There are certain short provisions of the law which I will call to your attention for your application to the present case. The word "intoxicating liquor" is defined in section 1 of Title 2 of the Act as follows:

"It shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter and wine, and, in addition thereto, any spirituous, vinous, malt or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half of one per centum or more of alcohol by volume, which are fit for use for beverage purposes."

Section 3 provides that,

"No person shall, on or before the date the Eighteenth Amendment to the Constitution of the United States goes into effect"—which was in January, 1920,—"manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor," except as authorized in the Act.

And section 21 provides,

“Any room, house, building, boat, vehicle, structure or place where intoxicating liquor is manufactured, sold, kept or bartered in violation of this Title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor.”

That is what is meant by the “nuisance” that is charged in the information.

Now, these are the provisions of the law which you are to apply to the facts that have been laid before you. Of course, the law is to be submitted to you by the Court. You are to take the law as the Court expounds it, whether right or wrong, and not what you believe the law ought to be, or, really, what you believe the law is. If the Court gives a wrong definition of the law, of course, there is a remedy in another tribunal.

But the facts are matters for the jury. The credibility of the witnesses, the facts that are proved, and whether the facts proven constitute violations of the law, as the Court lays it down, are matters for the jury to determine, and the jury is just as free from influence by the Court in finding the facts, and the Court desires always to be just as far from attempting to influence the jury in their determination of the facts as the Court is sensitive in having the jury accept from its declaration of the law.

With this understanding of our several duties,

I will now call your attention to the fact that there is some direct testimony in this case tending to show that the defendant Lardi did sell liquor on the various occasions. If you believe that to be established beyond a reasonable doubt, of course he is guilty at least of selling the liquor as charged. If you believe that he had it in his possession at this place for the purpose of sale, then he is guilty of maintaining the nuisance as charged. [126]

Now, there is another provision of the law. It is not charged that the defendant Morrison himself made the sales, though there is some suggestion that he was present and acquiesced in that, at least, and I want to call your attention to this provision of the Criminal Code: "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces or procures its commission is a principal." And if you should find that the law was being violated there, and, from all the evidence in the case, that the law was violated there on the evening of the 30th, and that a nuisance was maintained by somebody, and if you find that the defendant Morrison, in the language of the statute, either aided, abetted, counseled, commanded, induced or procured its commission, even if he did not himself commit it, he, of course, is a principal, and is chargeable and guilty as such.

Now, there are certain circumstances under which liquor may be lawfully possessed, but the burden of proof that such liquor was lawfully acquired and possessed is upon the possessor, and

no attempt has been made to prove that the liquor in question here was lawfully possessed by the person possessing them, whoever such person may have been. If you find, from the evidence, that such liquor was possessed by the defendants, or either of them, you are at liberty to find that such possession was unlawful because unexplained.

But even if you find it to be a fact that the liquors referred to in the indictment were sold on the premises described in the indictment, yet neither of the defendants can be convicted, unless you find from the evidence, beyond a reasonable doubt, that such defendant aided and abetted in such sale or sales, or that he made it himself. The mere fact, if it be a fact, that either of the defendants were present at the time the liquors referred to in the indictment were sold on the premises described would not be sufficient to convict such defendant, unless you find, from the evidence, beyond a reasonable doubt, that he participated in such sales. But if a defendant is in charge of the establishment there, and is present and sees a sale made, the jury will bear that fact in consideration, if they find it to be a fact, in determining whether such defendant either counseled, or commanded, or induced, or procured, or aided in the sale.

Now mere knowledge of the sale of liquor, without participation in such sale, is not sufficient, but participation—such participation as I have defined to you by aiding, abetting, counseling, commanding, inducing or procuring the sale, is necessary for conviction. Where an alleged sale of intoxicating

liquor is in violation of the law, there is a presumption that defendants did not make the sale. That is the usual presumption of innocence, and the Government must prove the sale, beyond a reasonable doubt, and in considering the question of the guilt or innocence of the defendants on trial, you are not to take into consideration the fact that two other defendants have entered pleas of "guilty." This fact cannot be used to the prejudice of the remaining defendants now on trial, or be considered by you in any way.

A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, the character of his testimony, or by evidence affecting his [127] character for truth, honesty or integrity, his motives, or by contradictory evidence. The jury are the exclusive judges of the credibility of witnesses. If you find that any witness has sworn falsely upon any material matter in the case, you have the right to reject the whole of his testimony, except in so far as it is corroborated by other credible evidence. The credit of the testimony is left to the jury who are the judges of the probability, the improbability, the credibility or incredibility of the witnesses testimony. The credit due to his testimony is to be measured, in part, by his interest or possible interest which may sway or pervert the truth, and by his manner in the courtroom in delivering his testimony, and the jury, in weighing the testimony of the witness, has a right to consider the probability of the matter related by him. Where a witness,

otherwise unimpeached, is testifying under circumstances calculated to create a strong bias, and states what, in its nature, is incredible, his testimony, of course, is not necessarily to be believed. In weighing and considering the testimony which has been introduced in this case you are entitled to consider and it is your duty to consider the extent to which the witnesses are interested, either pecuniarily or otherwise.

It is a rule of law, of course, that no man can be found guilty on suspicion, no matter how strong that may be. But such evidence as shows his guilt beyond a reasonable doubt is sufficient to warrant a conviction. In this case, as in every other, the defendants are presumed to be innocent, and the burden of proving their guilt rests upon the Government, and if the Government has failed to overcome such presumption of innocence in this particular case, your verdict should be "not guilty." The presumption of innocence attaches at the beginning of the trial and remains with the defendants, and each of them, throughout the trial and until by your verdict, you have otherwise determined, if you should so determine, and you should not so determine unless you are satisfied, from the evidence, of the guilt of such defendant beyond a reasonable doubt. A reasonable doubt is defined to be that state of the case which, after an entire comparison and consideration of all the evidence, leaves the minds of the jury in that condition that they cannot say that they have an abiding conviction, to a moral certainty, of the truth

of the charge. It is, in fact, such doubt as a reasonable man may honestly entertain after a fair consideration of all the evidence. If you have such reasonable doubt as to the guilt of the defendants, or either of them, it is your duty to give such defendant the benefit of that doubt. If you have no such reasonable doubt of the guilt of the defendants, or either of them, it is equally your duty to convict.

The mere keeping of liquor itself is not a common nuisance, although its possession may be unlawful, but such keeping must be for the purpose of sale or barter. An employer cannot be held responsible for the acts of his employee or servant unless he authorizes or participates in the same.

You may find both defendants guilty, if the facts, in your judgment, warrant it; you may find both of them not guilty if there is any reasonable doubt of their guilt; or you may find one defendant guilty and the other not guilty if, on your consideration of all the facts of the case, you find that such verdict is warranted under the instructions that I have given you. [128]

That the defendant Morrison requested the Court to give his instruction No. 17, which instruction is as follows:

“INSTRUCTION No. 17.

“I direct you to return a verdict of not guilty as to the defendant Albert Morrison, upon the ground that there is not sufficient evidence to warrant a submission to the jury.”

That the Court refused to give said instruction to

which refusal the defendant then and there noted an exception.

That after the Court had completed its charge to the jury, the jury retired to deliberate upon its verdict and thereafter brought in a verdict as follows:

“In the Southern Division of the United States District Court for the Northern District of California, First Division.

We, the jury find as to the defendants at the bar as follows:

Albert C. Morrison guilty on 1st and 2nd counts.

V. E. Lardi guilty on 3d and 4th counts.

ROBERT S. ATKINS,
Foreman.”

[Endorsed]: No. 9720. Verdict. Filed 9 o'clock & 40 mi. P. M. October 31st, 1921. Walter B. Maling, Clerk. Lyle S. Morris, Deputy Clerk.”

Thereupon the Court fixed Tuesday, November 4, 1921, at the hour of 10 o'clock A. M. as the date and time for the imposition, sentence and judgment, at which time all of the defendants were present in open court.

Whereupon counsel for the defendants Albert C. Morrison and V. E. Lardi made, served and filed the following written motions for arrest of judgment: [129]

“In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON et al.,

Defendants.

MOTION IN ARREST OF JUDGMENT.

Now comes Albert C. Morrison, one of the defendants in the above-entitled action, and against whom a verdict of guilty was rendered on the 31st day of October, 1921, on the first and second counts of the information filed herein, and moves the Court to arrest the judgment against said defendant on said counts, and hold for naught the verdict of guilty rendered against him for the following reasons:

1. That the first count of said information does not charge any offense against the laws of the United States, nor does it charge said defendant with the doing of anything the doing of which is forbidden by any of the laws of the United States.

2. That the said first count of said information is fatally defective and void in that:

- (a) It fails to set forth every element of the offense intended to be charged.

- (b) It does not set forth the alleged offenses in the language of the statute, or equivalent language.

(c) It does not set forth any facts sufficient in law to support a conviction.

(d) There is no fact or circumstance stated therein to advise the Court that an offense has been committed against the laws of the United States.

3. That the said first count of said information is lacking in the essential elements to constitute the offense sought to be charged.

4. That section 21 of Title II of the National Prohibition Act, this being the section under which the said first count of said information is based, (omitting the immaterial portions) is as follows:

“Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered *in violation of this title*, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall [130] be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or be imprisoned for not more than one year, or both. * * * ”

The first count of said information, and the whole thereof, is as follows, to wit:

“That Albert C. Morrison, V. E. Lardi, Richard Bucking and John Antonetti, hereinafter called the defendants heretofore, to wit: on or about the 30th day of July, 1921, at and in ‘Techau Tavern’ 247 Powell Street in the City and County of San Francisco, in the Southern Division of the Northern District of

California, and within the jurisdiction of this court, then and there being, did then and there wilfully and unlawfully maintain a common nuisance in that the said defendant did then and there wilfully and unlawfully keep on the premises at and in 'Techau Tavern,' 247 Powell Street, City and County of San Francisco, aforesaid, certain intoxicating liquor, to-wit: gin, whisky, port wine and red wine, all of said intoxicating liquors, then and there containing one half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the keeping of the said intoxicating liquor by the said defendant at the time and place aforesaid, was then and there prohibited, unlawful and in violation of section 21 of title II of the Act of Congress of October 28, 1919, to wit: The National Prohibition Act.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided."

That the said first count of said information fails to charge that the liquor referred to therein, was kept in violation of title II, or that it was kept for purposes of sale, or for other commercial purposes, or for any unlawful purpose.

5. That it is not averred or claimed in the first count of said information that the liquor referred to therein was kept in violation of provisions of title II as section 21 requires.

6. That section 21 referred to in the first count of said information that the liquors referred to intoxicating liquor in any house or building or place where it is so kept "in violation of" title II of the National Prohibition Act; that there is no averment of any kind or character in the first count of said information that the liquors referred to therein were kept in violation of title II, or for manufacture, sale, barter, transport, or export, or without a permit, or for any other unlawful purpose.

7. That the first count of said information fails to state facts sufficient to constitute the offense of willful or unlawful maintaining a common nuisance under the Act of Congress of October 28, 1919; namely, the National Prohibition Act.

8. That this defendant has been convicted on the first count of said information without due process of law and in violation of Articles V and VI of the Constitution of the United States of America. [131]

9. That the second count of said information does not state facts sufficient to constitute an offense against the laws of the United States.

10. That the second count of said information does not state facts sufficient to constitute an offense against the laws of the United States, in this:

(a) That there is no averment that the possession of the intoxicating liquors referred to therein was for the purposes of sale, or for any of the purposes referred to in section 3 of title II of the Act of Congress of October 28, 1919.

(b) That it fails to set forth every element of the offense intended to be charged.

(c) That it does not set forth the alleged offense in the language of the statute, or equivalent language.

(d) That it does not set forth any facts sufficient in law to support a conviction.

11. That this defendant has been convicted on the second count of said information herein without due process of law and in violation of Articles V and VI of the Constitution of the United States.

WHEREFORE, this defendant prays that this motion be sustained, and that the judgment of conviction against him be arrested and held for naught, and that he have all such other orders as may be just and proper in the premises.

BERT SCHLESINGER,
C. W. DURBROW,
Attorneys for said Defendant.

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI et al.,
Defendants.

MOTION IN ARREST OF JUDGMENT.

Now comes V. E. Lardi, one of the defendants in the above-entitled action, and against whom a verdict of guilty was rendered on the 31st day of October, 1921, on the third and fourth counts of the

information filed herein, and moves the Court to arrest the judgment against said defendant on said counts, and hold for naught [132] the verdict of guilty rendered against him for the following reasons:

1. That the said third and fourth counts of said information do not charge any offense against the laws of the United States, nor do they charge said defendant with the doing of anything the doing of which is forbidden by any of the laws of the United States.

2. That the said third and fourth counts of said information are fatally defective and void in that:

(a) They fail to set forth every element of the offense intended to be charged.

(b) They do not set forth any facts sufficient in law to support a conviction.

(c) There is no fact or circumstance stated therein to advise the Court that an offense has been committed against the laws of the United States.

3. That this defendant has been convicted on the said third and fourth counts of said information without due process of law and in violation of Articles V and VI of the Constitution of the United States of America.

WHEREFORE, this defendant prays that this motion be sustained, and that the judgment of conviction against him be arrested and held for naught, and that he have all such other orders as may be just and proper in the premises.

BERT SCHLESINGER,
C. W. DURBROW,
Attorneys for Said Defendant.

And said motions and each of them being denied, the said defendants and each of them then and there in open court duly excepted to the refusal of the Court to grant their respective motions in arrest of judgment.

Thereupon and in open Court the defendants Albert C. Morrison and V. E. Lardi, by their counsel, then made a motion for a new trial upon the ground of the insufficiency of the evidence to justify the conviction of the said defendant Albert C. Morrison, and the insufficiency of the evidence to justify the conviction of the defendant V. E. Lardi.

That said motion for new trial was denied by the Court to which order denying a new trial the defendants and each of them then and there in open Court duly excepted. [133]

Thereafter and on said 4th day of November, 1921, the following judgment on the verdict of guilty was made and entered by the Court, viz:

“In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 9720.

Convicted Viol. National Prohibition Act.

THE UNITED STATES OF AMERICA

vs.

ALBERT C. MORRISON and V. E. LARDI.

JUDGMENT ON VERDICT OF GUILTY (MORRISON COUNTS NOS. 1 and 2—LARDI COUNTS NOS. 3 and 4).

B. F. Geis, Assistant United States Attorney, and

the defendants with their counsel came into court. The defendants were duly informed by the Court of the nature of the Information filed on the 4th day of August, 1921, charging them with the crime of Violating the National Prohibition Act; of their arraignment and plea of Not Guilty; of their trial and the verdict of the Jury on the 31st day of October, 1921, to wit:

“We, the Jury, find as to the defendants at the bar as follows: Albert C. Morrison, guilty on 1st and 2nd Counts. V. E. Lardi, Guilty on 3rd and 4th Counts.

ROBERT S. ATKINS, Foreman.”

The defendants were then asked if they had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a Motion for New Trial and a Motion in Arrest of Judgment; thereupon the Court rendered its Judgment;

THAT, WHEREAS, the said Albert C. Morrison and V. E. Lardi having been duly convicted in this Court of the crime of Violating the National Prohibition Act;

IT IS THEREFORE ORDERED AND ADJUDGED that the said Albert C. Morrison be imprisoned for the period of six (6) months in the County Jail, County of San Francisco, California; that V. E. Lardi be imprisoned for the period of six (6) months in the County Jail, County of San Francisco, California.

Judgment entered this 4th day of November, A. D. 1921.

WALTER B. MALING,
Clerk.

By _____,
Deputy Clerk."

[Endorsed]: 9720. Morrison et al. Nov. 4, 1921. Entered in Vol.—, Judg. and Decrees, at page—— [134]

The foregoing contains all the proceedings that were had, and all the testimony that was taken and the evidence, oral and documentary, that was adduced at the trial of the above-entitled action.

WHEREFORE, in order that all the proceedings had upon the trial of the above-entitled cause may be preserved, the defendants propose the foregoing as a full and correct bill of exceptions of all the proceedings had, and of all the evidence adduced at the trial, by both the plaintiff and the defendants, and pray that the same may be settled and allowed as a bill of exceptions of such proceedings, to be used on appeal from the judgment herein.

Dated: December 21st, 1921.

BERT SCHLESINGER,
C. W. DURBROW,

Attorneys for Defendants Albert C. Morrison and
V. E. Lardi. [135]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

**Presentation of Bill of Exceptions and Notice
Thereof.**

The defendants Albert C. Morrison and V. E. Lardi hereby present the foregoing as their proposed bill of exceptions herein, and respectfully ask that the same may be allowed.

BERT SCHLESINGER,
C. W. DURBROW,

Attorneys for Defendants, Albert C. Morrison and
V. E. Lardi.

To ROBERT H. McCORMICK, Special Assistant
to the Attorney General of the United States,
and to John T. Williams, United States At-
torney, Northern District of California, At-
torneys for Plaintiff:

Sirs:

You will please take notice that the foregoing constitutes and is the proposed bill of exceptions of the defendants Albert C. Morrison and V. E.

Lardi in the above-entitled cause, and that said defendants will ask for the allowance of the same.

BERT SCHLESINGER,

C. W. DURBROW,

Attorneys for Said Defendants. [136]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT O. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

**Stipulation for Settlement and Allowance of Bill
of Exceptions, and Order Making Bill of Ex-
ceptions Part of the Records.**

It is hereby stipulated that the foregoing bill
of exceptions is correct, and that the same be
settled and allowed by the Court.

R. H. McCORMACK,

Sp. Asst. U. S. Atty.,

JOHN T. WILLIAMS,

U. S. Atty.,

F. J. SHERIDAN,

Asst. U. S. Atty.,

Attorneys for Plaintiff.

BERT SCHLESINGER,

C. W. DURBROW,

Attorneys for Said Defendants.

O. K.—BEN F. GEIS,
Asst. U. S. Atty.

This bill of exceptions having been duly presented to the Court and having been amended to correspond with the facts, is now signed and made a part of the records in this cause.

M. T. DOOLING,
Judge.

Dated: February 24th, 1922.

[Endorsed]: Receipt of a copy of the within is hereby admitted this 21st day of December, 1921.

ROBERT H. McCORMACK,
Attorney for Plaintiff.

Lodged Dec. 21, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Filed Feb. 24, 1922. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [137]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 9720.

UNITED STATES OF AMERICA.

vs.

MORRISON & LARDI.

Verdict.

We, the Jury, find as to the defendants at the bar as follows: Albert C. Morrison—guilty on the

1st and 2d counts; V. E. Lardi—guilty on 3d and 4th counts.

ROBERT S. ATKINS,
Foreman.

[Endorsed]: Filed Oct. 31, 1921, at 9 o'clock and 40 minutes P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [138]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 9720.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON et al.,

Defendants.

**Motion in Arrest of Judgment (Albert C.
Morrison).**

Now comes Albert C. Morrison, one of the defendants in the above-entitled action, and against whom a verdict of guilty was rendered on the 31st day of October, 1921, on the first and second counts of the information filed herein, and moves the Court to arrest the judgment against said defendant on said counts, and hold for naught the verdict of guilty rendered against him for the following reasons:

1. That the first count of said information does not charge any offense against the laws of the United States, nor does it charge said defendant with the doing of anything the doing of which is forbidden by any of the laws of the United States.

2. That the said first count of said information is fatally defective and void in that;

(a) It fails to set forth every element of the offense intended to be charged.

(b) It does not set forth the alleged offense in the language of the statute, or equivalent language.

(c) It does not set forth any facts sufficient in law to support a conviction. [139]

(d) There is no fact or circumstance stated therein to advise the Court that an offense has been committed against the laws of the United States.

3. That the said first count of said information is lacking in the essential elements to constitute the offense sought to be charged.

4. That section 21 of Title II of the National Prohibition Act, this being the section under which the said first count of said information is based (omitting the immaterial portions), is as follows:

“Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered *in violation of this title*, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a mis-

demeanor and upon conviction thereof shall be fined not more than \$1,000 or be imprisoned for not more than one year, or both. * * *"

The first count of said information, and the whole thereof, is as follows, to wit:

"That Albert C. Morrison, V. E. Lardi, Richard Bucking and John Antonetti, hereinafter called the defendants heretofore, to wit: on or about the 30th day of July, 1921, at and in 'Techau Tavern,' 247 Powell Street in the City and County of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, then and there being, did then and there willfully and unlawfully maintain a common nuisance in that the said defendant did then and there wilfully and unlawfully keep on the premises at and in 'Techau Tavern, 247 Powell Street, City and County of San Francisco, aforesaid, certain intoxicating liquors, to wit: gin, whiskey, port wine and red wine, all of said intoxicating liquors. then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the keeping of the said intoxicating liquor by said defendant at the time and place aforesaid was then and there prohibited, unlawful and in violation of section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

Against the peace and dignity of the United

States of America and contrary to the form of the statute of the said United States of America in such case made and provided.” [140]

That the said first count of said information fails to charge that the liquor referred to therein was kept in violation of title II, or that it was kept for purposes of sale, or for other commercial purposes, or for any unlawful purpose.

5. That it is not averred or claimed in the first count of said information that the liquor referred to therein was kept in violation of provisions of title II as section 21 requires.

6. That section 21 referred to in the first count of said information, only makes it an offense to keep intoxicating liquor in any house *of* building or place where it is so kept “in violation of” title II of the National Prohibition Act; that there is no averment of any kind or character in the first count of said information that the liquors referred to therein were kept in violation of title II, or for manufacture, sale barter, transport, or export, or without a permit, or for any other unlawful purpose.

7. That the first count of said information fails to state facts sufficient to constitute the offense of willful or unlawful maintaining a common nuisance under the Act of Congress of October 28, 1919; namely, the National Prohibition Act.

8. That this defendant has been convicted on the first count of said information without due process of law and in violation of Articles V and

VI of the Constitution of the United States of America.

9. That the second count of said information does not state facts sufficient to constitute an offense against the laws of the United States.

10. That the second count of said information does not state facts sufficient to constitute an offense against the laws of the United States, in this: [141]

(a) That there is no averment that the possession of the intoxicating liquors referred to therein was for purposes of sale, or for any of the purposes referred to in section 3 of title II of the Act of Congress of October 28, 1919.

(b) That it fails to set forth every element of the offense intended to be charged.

(c) That it does not set forth the alleged offense in the language of the statute, or equivalent language.

(d) That it does not set forth any facts sufficient in law to support a conviction.

11. That this defendant has been convicted on the second count of said information herein without due process of law and in violation of Articles V and VI of the Constitution of the United States.

WHEREFORE, this defendant prays that this motion be sustained, and that the judgment of conviction against him be arrested and held for naught, and that he have all such other orders as may be just and proper in the premises.

BERT SCHLESINGER,
T. L. LENNON,
Attorneys for Said Defendant.

[Endorsed]: Filed Nov. 4, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [142]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 9720.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, etc.,
Defendants.

Motion in Arrest of Judgment (V. E. Lardi).

Now comes V. E. Lardi, one of the defendants in the above-entitled action, and against whom a verdict of guilty was rendered on the 31st day of October, 1921, on the third and fourth counts of the information filed herein, and moves the Court to arrest the judgment against said defendant on said counts, and hold for naught the verdict of guilty rendered against him for the following reasons:

1. That the said third and fourth counts of said information do not charge any offense against the laws of the United States, nor do they charge said defendant with the doing of anything the doing or which is forbidden by any of the laws of the United States.

2. That the said third and fourth counts of said

information are fatally defective and void in that:

(a) They fail to set forth every element of the offense intended to be charged.

(b) They do not set forth any facts sufficient in law to support a conviction.

(c) There is no fact or circumstance stated therein to advise the Court that an offense has been committed against the [143] laws of the United States.

3. That this defendant has been convicted on the said third and fourth counts of said information without due process of law and in violation of Articles V and VI of the Constitution of the United States of America.

WHEREFORE, this defendant prays that this motion be sustained, and that the judgment of conviction against him be arrested and held for naught, and that he have all such other orders as may be just and proper in the premises.

BERT SCHLESINGER,

T. L. LENNON,

Attorneys for Said Defendant.

[Endorsed]: Filed Nov. 4, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [144]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 4th day of

November, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 9720.

UNITED STATES OF AMERICA

vs.

ALBERT C. MORRISON et al.

**Minutes of Court—November 4, 1921—Judgment,
etc.**

This case came on regularly this day for pronouncing of judgment as to defendants, Albert C. Morrison, V. E. Lardi, Richard Bucking and John Antonetti. Said defendants were present in court; defendants Albert C. Morrison and V. E. Lardi being present with their attorney, Bert Schlesinger, Esq., B. F. Geis, Esq., Asst. U. S. Dist. Atty., and R. H. McCormack, Esq., Special Asst. U. S. Atty. General, were present for and on behalf of the United States.

Defendants were called for judgment, duly informed of their arraignment, pleas, and the verdict of the jury, and asked if they had any legal cause to show why judgment should not be entered herein and

Thereupon Mr. Schlesinger, on behalf of defendants Albert C. Morrison and V. E. Lardi, presented and filed a Motion in Arrest of Judgment and, after hearing him, the Court ordered said motion denied and to which order exception was duly en-

tered. Mr. Schlesinger then moved the Court for order allowing said defendants a new trial herein and the Court likewise ordered said motion denied and to which order exception was duly entered.

No sufficient cause being shown or appearing why judgment should not be pronounced, the Court ordered that defendants [145] Albert C. Morrison and V. E. Lardi, for the offense of which they stand convicted, each be imprisoned for a period of six (6) months, and that defendants Richard Bucking and John Antonetti, for the offense of which they stand convicted, each be imprisoned for the period of four (4) months. Further ordered that said terms of imprisonment be executed upon said defendants by imprisonment in the County Jail of the County of San Francisco, State of California. Further ordered that each of said defendants stand committed to the custody of the U. S. Marshal to execute said judgments of imprisonment, and that commitments issue. On motion of Mr. Schlesinger, the Court ordered that execution of said judgment be and the same is hereby stayed for period of ten (10) days as to each defendant and that each defendant give bond in the sum of \$1000.00 for his appearance herein pending stay of execution, and that said defendants have until Nov. 8, 1921, to give and file such bonds.

Further ordered that bonds for appearance of defendants, pending appeal from aforesaid judgment, be and the same are hereby fixed in sum of \$4000.00, each. [146]

In the Southern Division of the United States District Court for the Northern District of California, First Division. No. 9720.

Convicted Viol. National Prohibition Act.

THE UNITED STATES OF AMERICA

vs.

ALBERT C. MORRISON and V. E. LARDI.

Judgment on Verdict of Guilty (Morrison Counts Nos. 1 and 2—Lardi Counts Nos. 3 and 4).

B. F. Geis, Esq., Assistant United States Attorney and the defendants with their counsel came into court. The defendants were duly informed by the Court of the nature of the information filed on the 4th day of August, 1921, charging him with the crime of violating the National Prohibition Act; of their arraignment and plea of Not Guilty; of their trial and the verdict of the Jury on the 31st day of October, 1921, to wit: "We, the Jury, find as to defendants at the bar as follows: Albert C. Morrison, Guilty on 1st and 2d Counts. V. E. Lardi, Guilty on 3d and 4th Counts. Robert S. Atkins, Foreman."

The defendants were then asked if they had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in arrest of judgment; thereupon the Court rendered its judgment:

THAT, WHEREAS, the said Albert C. Morrison and V. E. Lardi having been duly convicted in this Court of the crime of violating the National Prohibition Act;

IT IS THEREFORE ORDERED AND ADJUDGED that the said Albert C. Morrison be imprisoned for the period of six (6) months in [147] the County Jail, County of San Francisco, California; that V. E. Lardi be imprisoned for the period of six (6) months in the County Jail, County of San Francisco, California.

Judgment entered this 4th day of November, A. D. 1921.

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

Entered in Vol. 11 Judg. and Decrees, at page 329. [148]

In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICHARD BUCKING and JOHN ANTONETTI,
Defendants.

Petition for Writ of Error.

Now comes Albert C. Morrison and V. E. Lardi, two of the defendants in the above-entitled action, and bring this their petition for writ of error to the Southern Division of the District Court of the United States, for the Northern District of California, and in that behalf your petitioners show:

On the 4th day of November, 1921, there was made, rendered and entered in the above-entitled court and cause a judgment against your petitioners, wherein and whereby your petitioners, the said Albert C. Morrison and V. E. Lardi, were each adjudged and sentenced to imprisonment for the term of six months in the County Jail of the City and County of San Francisco, State of California; and your petitioners show that they are advised by counsel and they aver that there was and is manifest error in the records and proceedings had in said cause, and in the making, rendition and entry of said judgment, and sentence to the great injury and damage of your petitioner, all of which errors will be more fully made to appear by an examination of the said record [149] and by an examination of the bill of exceptions to be tendered and filed and in the assignments of errors presented herewith; and to that end thereafter that the said judgment, sentence and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, your petitioners now pray that a writ of error may be issued, directed therefrom to said Southern Division of the District

Court of the United States for the Northern District of California, returnable accordingly to law and the practice of the court, and that there may be directed to be returned pursuant thereto a true copy of the record, bill of exceptions, assignment of errors, and all proceedings had in the said cause, that the same may be removed unto the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the errors, if any have happened may be duly corrected, and full and speedy justice done to your petitioners; and that during the pendency of this writ of error all proceedings in this court be suspended and stayed and that through the pendency of said writ of error the defendants Albert C. Morrison and V. E. Lardi be admitted to bail in the sum of Four Thousand Dollars (\$4,000) each.

Dated: November 8, 1921.

BERT SCHLESINGER,
C. W. DURBROW,
Attorneys for Petitioners.

Service of the within is hereby admitted this 8th day of November, 1921.

JOHN T. WILLIAMS.

[Endorsed]: Filed Nov. 8, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [150]

In the Southern Division of the District Court of
the United States in and for the Northern Dis-
trict of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

**Assignment of Errors on Behalf of Defendant
Albert C. Morrison.**

Albert C. Morrison, a defendant in the above-en-
titled cause, and one of the plaintiffs in error
herein, having petitioned for an order from said
Court permitting him to procure a writ of error to
this court directed from the United States Circuit
Court of Appeals for the Ninth Circuit, from the
judgment and sentence made and entered in said
cause against said Albert C. Morrison, one of the
plaintiffs in error herein, now makes and files with
said petition the following assignment of errors
herein upon which he will rely for a reversal of said
judgment and sentence upon the said writ, and
which errors and each and every of them are to the
great detriment, injury and prejudice of the said
Albert C. Morrison, and in violation of the rights
conferred upon him by law; and he says that in the

record and proceedings in the above-entitled action, upon the hearing and determination thereof in the Southern Division of the District Court of the United States for the Northern District of California, there is manifest error in this, to wit: [151]

1. That there was no evidence adduced and none appears in the record showing that the defendant Albert C. Morrison at any time or place maintained a common nuisance, or wilfully and unlawfully, or otherwise, kept on the premises at and in Techau Tavern, 247 Powell Street, San Francisco, California, or elsewhere, certain or any intoxicating liquors then and there containing one-half of one per cent or more of alcohol by volume, or otherwise, which was then and there fit for use for beverage purposes in violation of the Act of Congress of October 28, 1919, to wit: the National Prohibition Act, or in violation of any law whatever.

2. That the evidence adduced on the trial of said cause failed to show that the said Albert C. Morrison kept on the premises and in Techau Tavern, 247 Powell Street, San Francisco, any intoxicating liquor for the manufacture, sale, barter, transport, or export or for any unlawful purposes.

3. The evidence showed without contradiction that Techau Tavern is a corporation and has been engaged in the restaurant business in San Francisco for twenty years or thereabouts, and that its integrity has never before been questioned or attacked; that the defendant Albert C. Morrison is an employee, namely, the manager of said concern;

that the place was maintained by the corporation and not by the defendant.

4. The evidence indisputably shows that if any intoxicating liquor was kept or produced or sold in or upon said premises it was done so without the knowledge or consent of the said corporation or of this defendant.

5. That the evidence indisputably showed that when the prohibition officers upon the occasion mentioned in the information investigated the premises the place was filled with people, some four hundred fifty guests, and on one of the tables was found [152] a trifling quantity of alleged intoxicating liquor of which the defendant Albert C. Morrison had no knowledge whatever.

6. That the evidence is wholly insufficient to justify the judgment and sentence against the defendant Albert C. Morrison in that there was not a scintilla of evidence adduced, or which appears in the record, which shows, or tends to show, that the said Albert C. Morrison at any time in Techau Tavern, or elsewhere, kept, or possessed, or sold, or bartered, or gave away, or otherwise disposed of intoxicating liquors, in violation of the Act of October 28, 1921, to wit, the National Prohibition Act, or had knowledge of the same.

7. That the evidence showed that no money whatever was paid to the defendant Albert C. Morrison, and that he had no knowledge that any money had been paid, or was to be paid, for any intoxicating liquors in the premises known as Techau

Tavern in violation of said Act of Congress of October 28, 1919.

8. That the judgment and sentence as to this defendant is wholly unsustained by any evidence showing, or tending to show, that the said defendant ever maintained, or permitted to be maintained, a common nuisance on the premises at and in Techau Tavern by keeping on said premises intoxicating liquor for the purpose of manufacture, and or sale, barter, transport, and or export, or without a permit, or for any other unlawful purpose.

9. That said judgment and sentence as to the defendant Albert C. Morrison is invalid and contrary to law for the reason that the evidence and record indisputably shows that the defendant Albert C. Morrison did not, at any time or place or under any circumstances, keep on said premises, or possess, or sell, or manufacture, or barter, or transport, or export, or give away, or otherwise dispose of any intoxicating liquor in violation of the Act of [153] Congress of October 28, 1919, to wit; the National Prohibition Act, or in violation of any law of the United States.

10. That the evidence conclusively shows that any intoxicating liquor that was found in or upon said premises was trifling in amount and was brought there without the knowledge or consent of the said defendant Albert C. Morrison, or of the Techau Tavern.

11. That the judgment and sentence is against law.

12. That the judgment and sentence is opposed

to law in the particulars wherein we have showed the evidence to be insufficient to justify judgment and sentence as to the defendant Albert C. Morrison.

13. The Court erred in overruling the objection to the introduction in evidence of that certain property and each and every article thereof described in a certain inventory attached to an alleged search-warrant issued on the 30th day of July, 1921, by Albert M. Hardie, United States Commissioner for the Northern District of California, and based on certain alleged affidavits of D. W. Rinckel, and A. S. Rinckel, and which said search-warrant is addressed to the United States Prohibition Enforcement Supervisor and his deputies, or any or either of them, and which objections were made upon the grounds that the search-warrant under which said property was taken was and is void in the following particulars:

(1) The supporting affidavits are based on information and belief.

(2) That the particular affidavits under which said search-warrant was issued is based upon information received from another person, and was not based upon the personal knowledge of the affiant. [154]

(3) That both the affidavit and search-warrant failed to name a known defendant, and there is no averment in the affidavit setting forth that anyone was about to commit any crime against the laws of the United States, or was using the prop-

erty or about to use the property or premises for the commission of any felony.

(4) That said search-warrant does not show probable cause and is not supported by affidavit naming or describing any particular person or persons.

(5) That said search-warrant is in violation of the Fourth and Fifth Amendments to the Federal Constitution, and is also in violation of the provisions of the Volstead Act.

(6) That said property was seized and taken by the Prohibition Enforcement Supervisor and Prohibition Enforcement Agent, hereinbefore referred to, without any lawful warrant of any kind and without the consent of the defendants, or any of them, and it is the intention of the Government officials to introduce the same in evidence against the defendants.

(7) That said property was taken solely under the search-warrant heretofore referred to.

To which order the defendant Albert C. Morrison then and there duly excepted.

14. The Court erred in refusing to give the instruction requested by the defendant Albert C. Morrison in which the said defendant asked that the jury be directed to return a verdict of not guilty on the ground that the evidence was insufficient to warrant the submission of the case to the jury, for the reason that there was not sufficient evidence to warrant such submission, to which refusal by the Court to give said requested instruction said defendant then and there duly excepted in the

presence of the jury and before its retirement.
[155]

15. That the Court erred in making, giving and rendering judgment against the defendant Albert C. Morrison on the first count of the information herein for the reason that the first count of the information does not state a crime or any offense against the laws of the United States.

16. That the Court erred in rendering judgment against the defendant Albert C. Morrison for the reason that the first count of the information fails to state a crime or any offense against the law of the United States.

17. That the Court erred in sentencing the said defendant Albert C. Morrison to be imprisoned without his first being adjudged guilty of any crime.

18. That the Court erred in pronouncing sentence against said defendant.

19. That the Court erred in imposing a general sentence against all the defendants herein.

20. That the Court did not impose any specific sentence and judgment against the said defendant Albert C. Morrison based upon either the first or second count of the indictment of which he was found guilty, but imposed a general sentence against all of said defendants, as follows: That the defendants Albert C. Morrison and V. E. Lardi be imprisoned in the County Jail of San Francisco for the period of six months and that the defendants Richard Bucking and John Antonetti be imprisoned in said County Jail for the period of four months.

21. That the Court was without warrant of law to impose a general sentence.

22. That the judgment and sentence of the Court in sentencing the said defendant A. C. Morrison to six months imprisonment in the County Jail is excessive and beyond the jurisdiction [156] of the Court in this:

That a conviction for keeping liquor in violation of Title II of the Act of Congress of October 28th, 1919, to wit, the National Prohibition Act shall be subject to a fine for a offense of not more than Five Hundred Dollars (\$500).

That said defendant Morrison was not found guilty of selling intoxicating liquors but merely of keeping intoxicating liquors under the first and second counts of the information, and therefore could only have been punished by a fine not to exceed Five Hundred Dollars (\$500).

23. The judgment and sentence of the Court is void as being contrary to the provisions of the Act of Congress of October 28th, 1919, to wit, the National Prohibition Act, and is particularly in conflict with Section 29 of said Act.

24. The Court erred in imposing sentence on the first count of the information in that the count is fatally defective in that it fails to state that the liquor was kept for sale or other commercial purposes.

25. That the Court erred in imposing judgment and sentence on the second count of the information in that the second count of the information is

fatally defective in that it fails to state that the liquor was kept for sale or other commercial purposes.

26. That the Court erred in imposing any judgment and sentence against the defendant Albert C. Morrison upon the ground that the information is fatally defective in that it does not allege that any liquor was kept by the defendant Albert C. Morrison for the purpose of sale, or other commercial purposes.

27. That the judgment and sentence imposed by the Court upon the defendant Albert C. Morrison is repugnant to and in violation of Article VIII of the Amendments to the Constitution of [157] the United States.

28. That the Court erred in refusing the motion of the defendant Albert C. Morrison in arrest of judgment in the following particulars.

(1) That the first count of said information does not charge any offense against the laws of the United States, nor does it charge said defendant with the doing of anything the doing of which is forbidden by any of the laws of the United States.

(2) That the said first count of said information is fatally defective and void in that:

(a) It fails to set forth every element of the offense intended to be charged.

(b) It does not set forth the alleged offense in the language of the statute, or equivalent language.

(c) It does not set forth any facts sufficient in law to support a conviction.

(d) There is no fact or circumstance stated therein to advise the Court that an offense has been committed against the laws of the United States.

(3) That the said first count of said information is lacking in the essential elements to constitute the offense sought to be charged.

(4) That section 21 of Title II of the National Prohibition Act, this being the section under which the said first count of said information is based, (omitting the immaterial portions) is as follows:

“Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered *in violation of this title*, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and upon a conviction thereof shall be fined not more than \$1,000 or be imprisoned for not more than one year, or both. * * * ” [158]

The first count of said information, and the whole thereof, is as follows, to wit:

“That Albert C. Morrison, V. E. Lardi, Richard Bucking and John Antonetti, hereinafter called the defendants heretofore, to wit, on or about the 30th day of July, 1921, at and in ‘Techau Tavern,’ 247 Powell Street in the City and County of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of

this court, then and there being, did then and there wilfully and unlawfully maintain a common nuisance in that the said defendant did then and there wilfully and unlawfully keep on the premises at and in 'Techau Tavern,' 247 Powell Street, City and County of San Francisco, aforesaid, certain intoxicating liquor, to wit: gin, whiskey, port wine and red wine, all of said intoxicating liquors, then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the keeping of the said intoxicating liquor by the said defendant at the time and place aforesaid, was then and there prohibited, unlawful and in violation of section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided."

That the said first count of said information fails to charge that the liquor referred to therein was kept in violation of title II, or that it was kept for purposes of sale, or for other commercial purposes, or for any unlawful purpose.

(5) That it is not averred or claimed in the first count of said information that the liquor referred to therein was kept in violation of provisions of title II as section 21 requires.

(6) That section 21 referred to in the first

count of said information, only makes it an offense to keep intoxicating liquor in any house or building or place where it is so kept "in violation of" title II of the National Prohibition Act; that there is no averment of any kind or character in the first count of said information that the liquors referred to therein were kept in violation of title II, or for manufacture, sale, barter, transport, or export, or without a permit, or for any other unlawful purpose. [159]

(7) That the first count of said information fails to state facts sufficient to constitute the offense of willful or unlawful maintaining a common nuisance under the Act of Congress of October 28, 1919, namely, the National Prohibition Act.

(8) That this defendant has been convicted on the first count of said information without due process of law in violation of Article V and VI of the Constitution of the United States of America.

(9) That the second count of said information does not state facts sufficient to constitute an offense against the laws of the United States.

(10) That the second count of said information does not state facts sufficient to constitute an offense against the laws of the United States, in this:

(a) That there is no averment that the possessions of the intoxicating liquors referred to therein was for purpose of sale, or for any of the purposes referred to in section 3 of title II of the Act of Congress of October 28, 1919.

(b) That it fails to set forth every element of

the offense intended to be charged.

(c) That it does not set forth the alleged offense in the language of the statute, or equivalent language.

(d) That it does not set forth any facts sufficient in law to support a conviction.

(11) That this defendant has been convicted on the second count of said information herein without due process of law and in violation of Articles V and VI of the Constitution of the United States.

To which refusal by the Court to grant said motion in arrest of judgment the defendant Albert C. Morrison then and there [160] duly excepted.

29. That the Court erred in denying the motion of the defendant Albert C. Morrison for a new trial, to which refusal by the Court to grant a new trial the defendant Albert C. Morrison then and there duly excepted.

Dated: November 8, 1921.

BERT SCHLESINGER,
C. W. DURBROW,

Attorneys for Albert C. Morrison, One of the
Plaintiffs in Error.

Service of the within is hereby admitted this 8th day of November, 1921.

JOHN T. WILLIAMS,
United States Atty.

[Endorsed]: Filed Nov. 8, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [161]

In the Southern Division of the District Court of
the United States in and for the Northern Dis-
trict of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,

Defendants.

**Assignment of Errors on Behalf of Defendant
V. E. Lardi.**

V. E. Lardi, a defendant in the above-entitled cause, and one of the plaintiffs in error herein, having petitioned for an order from said Court permitting him to procure a writ of error to this Court directed from the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and sentence made and entered in said cause against said V. E. Lardi, one of the plaintiffs in error herein now makes and files with said petition the following assignment of errors herein upon which he will rely for a reversal of said judgment and sentence upon the said writ, and which errors and each and every of them are to the great detriment, injury and prejudice of the said V. E. Lardi, and in violation of the rights conferred upon him by law; and he says that in the record and proceedings in the above-entitled action, upon the hearing and determination thereof in the Southern Division

of the District Court of the United States for the Northern District of California, there is manifest error in this, to wit: [162]

1. That the evidence adduced on the trial of said cause failed to show that the said V. E. Lardi sold on the premises and in Techau Tavern, 247 Powell Street, San Francisco, any intoxicating liquor.

2. That the evidence showed that if any liquors were kept or sold on the premises in violation of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act, the keeping of said liquors or the sale of said liquors on said premises did not originate in the mind of the defendant V. E. Lardi, but in the minds of the officers of the Government.

3. That the evidence is insufficient to justify the conviction of the defendant in that the evidence shows that the defendant was not and never had been engaged in keeping or selling liquors in violation of the Act of Congress of October 28, 1919, to wit: the National Prohibition Act; that the conception of and the intention to do the acts which this defendant is claimed to have done did not originate in his mind or with him but were the products of the brains of the officers of the Government, which they instilled into the mind of the defendant, and by deceitful representation and importunities lured him to put into effect.

4. That the evidence is wholly insufficient to justify the judgment and sentence against the defendant V. E. Lardi in that there was not a scintilla

of evidence adduced, or which appears in the record, which shows, or tends to show, that the said V. E. Lardi, at any time in Techau Tavern, or elsewhere, kept, or possessed, or sold, or bartered, or gave away or otherwise disposed of intoxicating liquors, in violation of the Act of October 28, 1919, to wit, the National Prohibition Act, or had knowledge of the same. [163]

5. That the judgment and sentence as to this defendant is wholly unsustained by any evidence showing or tending to show that the defendant ever sold any intoxicating liquor on the premises Techau Tavern, or that he kept on said premises intoxicating liquor for the purpose of manufacture, sale, barter, transport, or export, or without a permit, or for any other unlawful purpose.

6. That said judgment and sentence as to the defendant V. E. Lardi is invalid and contrary to law for the reason that the evidence and record indisputably shows that the defendant V. E. Lardi did not, at any time or place or under any circumstances, keep on said premises, or possess, or sell, or manufacture, or barter, or transport, or export, or give away, or otherwise dispose of any intoxicating liquor in violation of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act, or in violation of any law of the United States.

7. That the judgment and sentence is against the law.

8. That the judgment and sentence is opposed to law in the particulars wherein we have showed the evidence to be insufficient to justify judgment and

sentence as to the defendant, V. E. Lardi.

9. The Court erred in overruling the objection to the introduction in evidence of that certain property and each and every article thereof described in a certain inventory attached to an alleged search-warrant issued on the 30th day of July, 1921, by Albert M. Hardie, United States Commissioner for the Northern District of California, and based on certain alleged affidavits of D. W. Rinckel and A. S. Rinckel, and which said search-warrant is addressed to the United States Prohibition Enforcement Supervisor, and to his deputies, or any or either of them, and which objections were made upon the grounds [164] that the search-warrant under which said property was taken was and is void in the following particulars:

(1) The supporting affidavits are based on information and belief.

(2) That the particular affidavit under which said search-warrant was issued is based upon information received from another person, and was not based upon the personal knowledge of the affiant.

(3) That both the affidavit and search-warrant failed to name a known defendant, and there is no averment in the affidavit setting forth that any one was about to commit any crime against the laws of the United States, or was using the property or about to use the property or premises for the commission of any felony.

(4) That said search-warrant does not show probable cause and is not supported by affidavit

naming or describing any particular person or persons.

(5) That said search-warrant is in violation of the Fourth and Fifth Amendments to the Federal Constitution, and is also in violation of the provisions of the Volstead Act.

(6) That said property was seized and taken by the Prohibition Enforcement Supervisor and Prohibition Enforcement Agent, hereinbefore referred to, without any lawful warrant of any kind and without the consent of the defendants, or any of them, and it is the intention of the Government officials to introduce the same in evidence against the defendants.

(7) That said property was taken solely under the search-warrant heretofore referred to.

To which order the defendant V. E. Lardi then and there duly excepted.

(10) The Court erred in refusing to give the instruction [165] requested by the defendant V. E. Lardi in which the said defendant asked that the jury be directed to return a verdict of not guilty on the ground that the evidence was insufficient to warrant the submission of the case to the jury, for the reason that there was not sufficient evidence to warrant such submission, to which refusal by the Court to give said requested instruction the said defendant then and there duly excepted in the presence of the jury and before its retirement.

11. That the Court erred in sentencing the said defendant V. E. Lardi to be imprisoned without

his first being adjudged guilty of any crime.

12. That the Court erred in pronouncing sentence against said defendant.

13. That the Court erred in imposing a general sentence against all the defendants herein.

14. That the Court did not impose any judgment and sentence against this defendant upon any specific count of the information, but imposed a general sentence against all the defendants, as follows: That the defendants Albert C. Morrison and V. E. Lardi be imprisoned in the County Jail of San Francisco for a period of six months and that the defendants Richard Bucking and John Antonetti be imprisoned in said County Jail for a period of four months.

15. That the Court was without warrant of law to impose a general sentence.

16. The judgment and sentence of the Court is void as being contrary to the provisions of the Act of Congress of October 28th, 1919, to wit, the National Prohibition Act, and is particularly in conflict with Section 29 of said Act. [166]

17. That the judgment and sentence imposed by the Court upon the defendant V. E. Lardi is repugnant to and in violation of Article VIII of the Amendments to the Constitution of the United States.

18. That the Court erred in refusing the motion of the defendant V. E. Lardi in arrest of judgment in the following particulars:

(1) That the said third and fourth counts of said information do not charge any offense against

the laws of the United States, nor do they charge said defendant with the doing of anything the doing of which is forbidden by any of the laws of the United States.

(2) That the said third and fourth counts of said information are fatally defective and void in that:

(a) They fail to set forth every element of the offense intended to be charged.

(b) They do not set forth any facts sufficient in law to support a conviction.

(c) There is no fact or circumstance stated therein to advise the Court that an offense has been committed against the laws of the United States.

(3) That this defendant has been convicted on the said third and fourth counts of said information without due process of law and in violation of Article V. and VI of the Constitution of the United States of America.

To which refusal by the Court to grant said motion in arrest of judgment the defendant V. E. Lardi then and there duly excepted.

19. That the Court erred in denying the motion of the defendant V. E. Lardi for a new trial, to which refusal by the [167] Court to grant a new trial the defendant V. E. Lardi then and there duly excepted.

Dated: November 8, 1921.

BERT SCHLESINGER,
C. W. DURBROW,

Attorneys for V. E. Lardi, One of the Plaintiffs
in Error.

Service of the within is hereby admitted this 8th day of November, 1921.

JOHN T. WILLIAMS,
U. S. Attorney.

[Endorsed]: Filed Nov. 8, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[168]

In the Southern Division of the District Court of the United States in and for the Northern District of California.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

ALBERT C. MORRISON, V. E. LARDI, RICHARD BUCKING and JOHN ANTONETTI,
Defendants.

Order Allowing Writ of Error and Supersedeas.

The writ of error and supersedeas therein prayed for by defendants Albert C. Morrison and V. E. Lardi pending the decision upon the writ of error are hereby allowed, and each of said defendants is admitted to bail upon the writ of error in the sum of Four Thousand Dollars (\$4,000). The bond for costs upon the writ of error is hereby fixed at the sum of Five Hundred Dollars (\$500.00).

Dated: November 8, 1921.

M. T. DOOLING,
District Judge of the United States for the Northern District of California.

Service of within hereby admitted this 8th day of November, 1921.

JOHN T. WILLIAMS,
U. S. Attorney.

[Endorsed]: Filed Nov. 8, 1921. W. B. Mal-
ing, Clerk. By C. W. Calbreath, Deputy Clerk.
[169]

In the Southern Division of the District Court of
the United States in and for the Northern Dis-
trict of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

Writ of Error (Copy).

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to
the Honorable, the Judges of the District Court
of the United States for the Northern District
of California, GREETING:

Because, in the record and proceedings, as also
in the rendition of the judgment of a plea which is
in the said District Court, before you, or some of
you, between Albert C. Morrison and V. E. Lardi,
plaintiffs in error, and the United States of Amer-

ica, defendant in error, a manifest error hath happened, to the great damage of the said Albert C. Morrison and V. E. Lardi, plaintiffs in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit [170] Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WM. HOWARD TAFT, Chief Justice of the United States, the 8th day of November, in the year of our Lord one thousand nine hundred and twenty-one.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

C. W. Calbreath,
Deputy Clerk.

Allowed by:

M. T. DOOLING,
Judge.

Dated: November 8th, 1921.

Service of within is hereby admitted this 8th day of November, 1921.

JOHN T. WILLIAMS,
U. S. Attorney.

[Endorsed]: Filed Nov. 8, 1921. W. B. Mal-
ling, Clerk. By C. W. Calbreath, Deputy Clerk.
[171]

In the Southern Division of the District Court of
the United States in and for the Northern Dis-
trict of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

Citation on Writ of Error (Copy).

United States of America,
Northern District of California,—ss.

To the United States of America, GREETING:

You are hereby cited and admonished to be and
appear at a United States Circuit Court of Appeals
for the Ninth Circuit, to be holden at the City of

San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's office at the United States District Court for the Northern District of California, wherein Albert C. Morrison and V. E. Lardi are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable MAURICE T. DOOLING, Judge of the United States District Court, for the Northern District of [172] California, this 8th day of November, 1921.

M. T. DOOLING,
United States District Judge.

Service of the within is hereby admitted this 8th day of November, 1921.

JOHN T. WILLIAMS,
United States Attorney.

[Endorsed]: Filed Nov. 8, 1921. W. B. Mal-
ing, Clerk. By C. W. Calbreath, Deputy Clerk.
[173]

In the Southern Division of the District Court of
the United States in and for the Northern Dis-
trict of California.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

Supersedeas Bond (Albert C. Morrison).

KNOW ALL MEN BY THESE PRESENTS,
that we, Albert C. Morrison of the City and County
of San Francisco, State of California, as principal,
and Carlton H. Wall and Alfred L. Meyerstein, both
of the City and County of San Francisco, State of
California, as sureties, are held and firmly bound
unto the United States of America in the full
sum of Four Thousand Dollars (\$4,000.00), lawful
money of the United States, and the further sum
of Five Hundred (\$500.00), lawful money of the
United States, to be paid to the United States of
America, to which payment, well and truly to be
made, we bind ourselves, our heirs, executors and
administrators, jointly and severally, by those pres-
ents.

Scaled with our seals and dated this 8th day of
November, 1921.

Whereas, lately at a term of the Southern Divi-
sion of the District Court of the United States,
for the Northern District of California, in a suit

pending in the said Court between the United States of America and Albert C. Morrison, V. E. Lardi, Richard Bucking and John Antonetti, defendants, a judgment and [174] sentence was made, given, rendered and entered against the said defendants, and the said Albert C. Morrison and V. E. Lardi having obtained a writ of error from the United States Circuit Court of Appeal for the Ninth Circuit to reverse said judgment and sentence, and a citation directed to the United States of America to be and appear in the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, pursuant to the terms and at the time fixed in said citation, which said citation has been duly served:

Now, the condition of the above obligation is such, that if the said Albert C. Morrison shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his writ of error, and if the said Albert C. Morrison shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of said judgment and sentence as said Court may direct, if the judgment and sentence against him shall be affirmed; and if he shall appear for trial in the District Court of the United States, for the Northern District of California, on such day or days as may be appointed for the retrial by said District Court, and abide by and obey

all orders made by said Court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void; otherwise to remain in full force.

ALBERT C. MORRISON. (Seal)

C. H. WALL. (Seal)

ALFRED L. MEYERSTEIN. (Seal)

[175]

Signed, sealed and acknowledged before me this 8th day of November, 1821.

[Seal of the Commissioner]

THOMAS E. HAYDEN,

U. S. Commissioner Northern District of California
at S. F.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

C. H. Wall and Alfred L. Meyerstein, being duly sworn, each for himself says: That he is a resident and householder in the Northern District of California, and is worth in property situated therein the sum of Four Thousand Five Hundred Dollars (\$4,500.00) over and above all his just debts and liabilities, exclusive of property exempt from execution.

C. H. WALL.

ALFRED L. MEYERSTEIN.

Subscribed and sworn to before me this 8th day of November, 1921.

[Seal of the Commissioner]

THOMAS E. HAYDEN,

U. S. Commissioner Northern District of California
at S. F.

[Endorsed]: Filed Nov. 8, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [176]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

Supersedeas Bond (V. E. Lardi).

KNOW ALL MEN BY THESE PRESENTS,
that we, V. E. Lardi, of the City and County of San
Francisco, State of California, and Carlton H. Wall
and Alfred L. Meyerstein, both of the City and
County of San Francisco, State of California, as
sureties, are held and firmly bound unto the United
States of America in the full sum of Four Thousand
Dollars (\$4,000.00), lawful money of the United
States, and the further sum of Five Hundred Dol-
lars (\$500.00), lawful money of the United States,

to be paid to the United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by those presents.

Sealed with our seals and dated this 8th day of November, 1921.

Whereas, lately at a term of the Southern Division of the District Court of the United States, for the Northern District of California, in a suit pending in the said Court between the United States of America and Albert C. Morrison, V. E. Lardi, Richard Bucking and John Antonetti, defendants, a judgment and [177] sentence was made, given, rendered and entered against the said defendants, and the said Albert C. Morrison and V. E. Lardi having obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to reverse said judgment and sentence, and a citation directed to the United States of America to be and appear in the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, pursuant to the terms and at the time fixed in said citation, which said citation has been duly served:

Now, the condition of the above obligation is such, that if the said V. E. Lardi shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his writ of error, and if the said V. E. Lardi shall abide by and obey all orders made by the United

States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of said judgment and sentence as said Court may direct, if the judgment and sentence against him shall be affirmed; and if he shall appear for trial in the District Court of the United States, for the Northern District of California, on such day or days as may be appointed for the retrial by said District Court, and abide by and obey all orders made by said Court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void; otherwise to remain in full force.

V. E. LARDI. (Seal)

C. H. WALL. (Seal)

ALFRED L. MEYERSTEIN. (Seal)

[178]

Signed, sealed and acknowledged before me this 8th day of November, 1921.

[Seal of the Commissioner]

THOMAS E. HAYDEN,

U. S. Commissioner Northern District of California
at S. F.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

C. H. Wall and Alfred L. Meyerstein, being duly sworn, each for himself says: That he is a resident and householder in the Northern District of California, and is worth in property situated therein the sum of Four Thousand Five Hundred Dollars

(\$4,500.00) over and above all his just debts and liabilities, exclusive of property exempt from execution.

C. H. WALL.

ALFRED L. MEYERSTEIN.

Subscribed and sworn to before me this 8th day of November, 1921.

[Seal of the Commissioner]

THOMAS E. HAYDEN,

U. S. Commissioner Northern District of California
at S. F.

[Endorsed]: Filed Nov. 8, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [179]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

**Stipulation and Order Extending Time Thirty Days
to Prepare, Serve and File Bill of Exceptions.**

It is hereby stipulated and agreed that the defendants Albert C. Morrison and V. E. Lardi may have and they are hereby granted thirty (30) days from and after the date hereof within which to

prepare, serve and file bill of exceptions herein.

Dated: November 8, 1921.

ROBERT H. McCORMACK,
Special Asst. U. S. Attorney General.

So ordered:

M. T. DOOLING,
Judge.

Dated: November 8, 1921.

[Endorsed]: Filed Nov. 8, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [180]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

**Stipulation and Order Extending Time to and In-
cluding January 5, 1922, to Prepare and Serve
Bill of Exceptions.**

IT IS HEREBY STIPULATED AND AGREED
that the defendants Albert C. Morrison and V. E.
Lardi may have and they are hereby granted to
and including January 5, 1922, within which to
prepare and serve proposed bill of exceptions

herein on behalf of the defendants Albert C. Morrison and V. E. Lardi.

Dated: December 5, 1922.

ROBERT H. McCORMACK,
Special Asst. U. S. Attorney General.

BERT SCHLESINGER,

C. W. DURBROW,

Attorneys for Defendants Albert C. Morrison and
V. E. Lardi.

So ordered:

Dated: December 5th, 1921.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Dec. 5, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [181]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

ALBERT C. MORRISON and V. E. LARDI,
Defendants and Plaintiffs in Error.

Stipulation and Order Extending Time to and Including February 1, 1922, for Settlement of Bill of Exceptions.

IT IS HEREBY STIPULATED AND AGREED that the time to present for settlement and have settled the bill of exceptions of the defendants and plaintiffs in error, Albert C. Morrison and V. E. Lardi, in the above-entitled action, and any amendments that are made thereto by the plaintiff and defendant in error herein, is extended to and including February 1, 1922.

Dated: January 7, 1922.

R. H. McCORMACK,
Sp. Asst. Atty. Gen.

JOHN T. WILLIAMS,
U. S. Dist. Atty.

T. J. SHERIDAN,
Asst. U. S. Atty.

C. W. DURBROW,
BERT SCHLESINGER,

Attorneys for Defendants and Plaintiffs in Error
Albert C. Morrison and V. E. Lardi.

It is so ordered:

M. T. DOOLING,
Judge.

[Endorsed]: Filed Jan. 7, 1922. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [182]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

ALBERT C. MORRISON and V. E. LARDI,
Defendants and Plaintiffs in Error.

**Stipulation and Order Extending Time to and In-
cluding February 10, 1922, for Settlement of
Bill of Exceptions.**

IT IS HEREBY STIPULATED that the above-
named court may settle and file the Bill of Excep-
tions heretofore prepared and signed by the re-
spective attorneys for plaintiffs and defendants on
or before February 10, 1922.

Dated: February 30th, 1922.

ROBT. H. McCORMACK,
JOHN T. WILLIAMS,
T. J. SHERIDAN,
Attorneys for Plaintiff and Defendant in Error.
C. W. DURBROW,
BERT SCHLESINGER,
Attorneys for Defendants and Plaintiffs in Error.
It is so ordered:

M. T. DOOLING,
Judge.

[Endorsed]: Filed Jan. 30, 1922. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [183]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

ALBERT C. MORRISON and V. E. LARDI,
Defendants and Plaintiffs in Error.

**Stipulation and Order Extending Time to and In-
cluding February 20, 1922, for Settlement of
Bill of Exceptions.**

IT IS HEREBY STIPULATED that the above-
named court may settle and file the bill of excep-
tions heretofore prepared and signed by the re-
spective attorneys for plaintiff and defendants on
or before February 20, 1922.

Dated: February 10, 1922.

R. H. McCORMACK,
Sp. Asst. U. S. Atty. Gen.,
JOHN T. WILLIAMS,
United States Attorney.

T. J. SHERIDAN,
Asst. U. S. Atty.,

Attorneys for Plaintiff and Defendant in Error.

C. W. DURBROW,
BERT SCHLESINGER,

Attorneys for Defendants and Plaintiffs in Error.

It is so ordered:

M. T. DOOLING,
Judge.

[Endorsed]: Filed Feb. 10, 1922. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [184]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

ALBERT C. MORRISON and V. E. LARDI,
Defendants and Plaintiffs in Error.

**Stipulation and Order Extending Time to and In-
cluding February 25, 1922, for Settlement of
Bill of Exceptions.**

IT IS HEREBY STIPULATED that the above-
named court may settle and file the bill of ex-
ceptions heretofore prepared and signed by the re-
spective attorneys for plaintiffs and defendants on
or before February 25th, 1922.

Dated, February 18th, 1922.

ROBT. H. McCORMACK,
JOHN T. WILLIAMS,
BEN F. GEIS,

Attorneys for Plaintiff and Defendant in Error.

BERT SCHLESINGER,
C. W. DURBROW,

Attorneys for Defendants and Plaintiffs in Error.

It is so ordered:

M. T. DOOLING,
Judge.

[Endorsed]: Filed Feb. 18, 1922. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [185]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

**Stipulation and Order (Transmitting Original Ex-
hibits).**

It is hereby stipulated that the exhibits num-
bered 6 and 7 of the United States of America, the
plaintiff above named, which were admitted in evi-

dence on the trial of the above-entitled action, need not be printed in the bill of exceptions, nor in the transcript on appeal herein, but that the Clerk of the above-named court shall transmit said exhibits to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and said exhibits shall be deemed a part of the bill of exceptions herein notwithstanding they are not printed therein, and may be referred to and used by any of the parties hereto without objection on the hearing on appeal with the same force and effect as though the same and each thereof had been printed in said bill of exceptions and in the transcript on appeal.

Dated: February 24th, 1922.

ROBT. H. McCORMACK,
 Special Asst. U. S. Atty. General,
 JOHN T. WILLIAMS,
 U. S. Atty., [186]
 T. J. SHERIDAN,
 Asst. U. S. Atty.,
 BEN F. GEIS,
 Asst. U. S. Atty.,
 Attorneys for Plaintiff.
 BERT SCHLESINGER,
 C. W. DURBROW,
 Attorneys for Defendants.

It is so ordered:

M. T. DOOLING,
 Judge.

[Endorsed]: Filed Feb. 24, 1922. W. B. Maling,
 Clerk. By C. W. Calbreath, Deputy Clerk. [187]

Certificate of Clerk U. S. District Court to Transcript of Record on Writ of Error.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 187 pages, numbered from 1 to 187, inclusive, contain a full, true, and correct transcript of certain records and proceedings, in the case of United States of America, vs. Albert C. Morrison et al., No. 9720, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on writ of error (copy of which is embodied herein), and the instructions of the attorney for defendants and plaintiffs in error herein.

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error is the sum of Seventy-nine Dollars and Thirty-five Cents (\$79.35), and that the same has been paid to me by the attorney for the plaintiffs in error herein.

Annexed hereto are the original writ of error (page 189), return to writ of error (page 192), and original citation on writ of error (page 193).

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court, this 29th day of March, A. D. 1922.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,

Deputy Clerk. [188]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

Writ of Error (Original).

United States of America,—ss.

The President of the United States of America,
to the Honorable, the Judges of the District
Court of the United States for the Northern
District of California, GREETING:

Because, in the record and proceedings, as also
in the rendition of the judgment of a plea which
is in the said District Court, before you, or some of
you, between Albert C. Morrison and V. E. Lardi,
plaintiffs in error, and the United States of Amer-
ica, defendant in error, a manifest error hath
happened, to the great damage of the said Albert
C. Morrison and V. E. Lardi, plaintiffs in error,
as by his complaint appears:

We, being willing that error, if any hath been,
should be duly corrected, and full and speedy
justice be done to the parties aforesaid in this be-
half, do command you, if judgment be therein
given, that then, under your seal, distinctly and
openly you send the record and proceedings afore-

said, with all things concerning the same, to the United States Circuit Court of Appeals for the [189] Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WM. HOWARD TAFT, Chief Justice of the United States, the 8th day of November, in the year of our Lord one thousand nine hundred and twenty-one.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

C. W. Calbreath,
Deputy Clerk.

Allowed by:

M. T. DOOLING,
Judge.

Dated: November 8th, 1921. [190]

[Endorsed]: No. 9720. Southern Division of the District Court of the United States, Northern District of California. United States of America, Plaintiff, vs. Albert C. Morrison, V. E. Lardi, et al., Defendants. Writ of Error. Filed Nov. 8, 1921. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Service of within hereby admitted this 8th day of November 1921.

JOHN T. WILLIAMS,
U. S. Attorney. [191]

Return to Writ of Error.

The answer of the Judges of the District Court of the United States, for the Northern District of California, to the within writ of error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within obtained.

We further certify that a copy of this writ was on the 8th day of November, A. D. 1921, duly lodged in the case in this Court for the within named defendant in error.

By the Court:

[Seal] WALTER B. MALING,
Clerk U. S. District Court, Northern District of
California.

By C. M. Taylor,
Deputy Clerk. [192]

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants.

Citation on Writ of Error (Original).

United States of America,
Northern District of California,—ss.

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's office at the United States District Court for the Northern District of California, wherein Albert C. Morrison and V. E. Lardi are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable MAURICE T. DOOLING, Judge of the United States District Court,

for the Northern District of [193] California,
this 8th day of November, 1921.

M. T. DOOLING,
United States District Judge. [194]

Service of the within is hereby admitted this 8th
day of November, 1921.

JOHN T. WILLIAMS,
U. S. Attorney. [195]

[Endorsed]: No. 9720. Southern Division of
the District Court of the United States, Northern
District of California. United States of America,
Plaintiff, vs. Albert C. Morrison, V. E. Lardi, Rich-
ard Bucking and Antonetti, Defendants. Citation
on Writ of Error. Filed Nov. 8, 1921. W. B.
Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[Endorsed]: No. 3858. United States Circuit
Court of Appeals for the Ninth Circuit. Albert C.
Morrison and V. E. Lardi, Plaintiffs in Error, vs.
The United States of America, Defendant in Error.
Transcript of Record. Upon Writ of Error to the
Southern Division of the United States District
Court of the Northern District of California, First
Division.

Filed April 5, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

ALBERT C. MORRISON and V. E. LARDI,
Plaintiffs in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

**Order Enlarging Time to and Including January 5,
1922, to File Record and Docket Cause.**

GOOD CAUSE APPEARING THEREFOR, IT
IS HEREBY ORDERED that the plaintiffs in
error may have and they are hereby granted to and
including January 5, 1922, within which to file the
transcript on appeal and docket the cause in this
case on writ of error to the Southern Division of
the District Court of the United States in and for
the Northern District of California, First Division,
and the return day of the citation heretofore issued
in the above-entitled action is enlarged to January
5, 1922.

Dated: December 5, 1921.

WM. H. HUNT,
Judge.

[Endorsed]: No. 3858. United States Circuit
Court of Appeals Ninth Circuit. Albert C. Mor-
rison and V. E. Lardi, Plaintiffs in Error, vs.
United States of America, Defendant in Error.
Order Enlarging Return Day of Citation. Filed
Dec. 5, 1921. F. D. Monckton, Clerk. Refiled
Apr. 5, 1922. F. D. Monckton, Clerk.

In the Southern Division of the District Court of
the United States in and for the Northern
District of California, First Division.

No. 9720.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error.
vs.

ALBERT C. MORRISON, V. E. LARDI, RICH-
ARD BUCKING and JOHN ANTONETTI,
Defendants and Plaintiffs in Error.

**Stipulation and Order Enlarging Return Day on
Writ of Error and Citation on Writ of Error
Thirty Days.**

It is hereby stipulated that the return day on
the writ of error and on the citation on the writ of
error may be, and the same is, hereby extended
thirty (30) days from January 5, 1922.

Dated: January 5, 1922.

R. H. McCORMACK,
Special Atty. Gen.,
JOHN T. WILLIAMS,
U. S. Atty.,
T. J. SHERIDAN,
Asst. U. S. Atty.,

Attorneys for Plaintiff and Defendant in Error.

C. W. DURBROW,
BERT SCHLESINGER,
Attorneys for Defendants Albert C. Morrison and
V. E. Lardi, and Plaintiffs in Error.

So ordered:

M. T. DOOLING,
Judge.

[Endorsed]: No. 9720. Southern Division of the District Court of the United States, Northern District of California, First Division. United States of America, Plaintiff, and Defendant in Error, vs. Albert C. Morrison, V. E. Lardi, Richard Bucking and John Antonetti, Defendants, and Plaintiffs in Error. Stipulation and Order Enlarging Return Day on Writ of Error and Citation on Writ of Error.

No. 3858. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including Feb. 4, 1922, to File Record and Docket Cause. Filed Jan. 5, 1922. F. D. Monckton, Clerk. Refiled Apr. 5, 1922. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the
Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff and Defendant in Error,

vs.

ALBERT C. MORRISON, V. E. LARDI,

Defendants and Plaintiffs in Error.

**Stipulation and Order Enlarging Return Day on
Writ of Error and Citation on Writ of Error
Thirty Days.**

It is hereby stipulated that the return day on the writ of error and on the citation on the writ of error may be, and the same is, extended thirty (30) days from February 4, 1922.

Dated: February 3, 1922.

R. H. McCORMACK,
Sp. Atty. Gen.,
JOHN T. WILLIAMS,
U. S. Atty.,
T. J. SHERIDAN,
Asst. U. S. Atty.

Attorneys for Plaintiff and Defendant in Error.

C. W. DURBROW,
BERT SCHLESINGER,
Attorneys for Defendants and Plaintiffs in Error.

So ordered:

W. H. HUNT,
Judge.

[Endorsed]: No. 3858. U. S. Circuit Court of Appeals, for the Ninth Circuit. United States of America, Plaintiff and Defendant in Error, vs. Alfred C. Morrison and V. E. Lardi, Defendants and Plaintiffs in Error. Stipulation and Order Enlarging Return Day on Writ of Error and Citation on Writ of Error. Filed Feb. 3, 1922. F. D. Monckton, Clerk. Refiled Apr. 5, 1922. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

ALBERT C. MORRISON and V. E. LARDI,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

**Stipulation and Order Enlarging Return Day on
Writ of Error and Citation on Writ of Error
Thirty Days.**

It is hereby stipulated that the return day on the writ of error and on the citation on the writ of error may be, and the same is, hereby extended thirty (30) days from March 6th, 1922.

Dated: March 4th, 1922.

C. W. DURBROW,
BERT SCHLESINGER,
Attorneys for Plaintiffs in Error.

JOHN T. WILLIAMS,
Attorney for Defendant in Error.

It is so ordered by the Court.

W. H. HUNT,
Judge.

[Endorsed]: No. 3858. In the United States Circuit Court of Appeals for the Ninth Circuit. Albert C. Morrison and V. E. Lardi, Plaintiffs in Error, vs. United States of America, Defendant in Error. Stipulation and Order Enlarging Return Day on Writ of Error and Citation on Writ of Error. Filed Mar. 4, 1922. F. D. Monekton, Clerk. Refiled Apr. 5, 1922. F. D. Monekton, Clerk.

